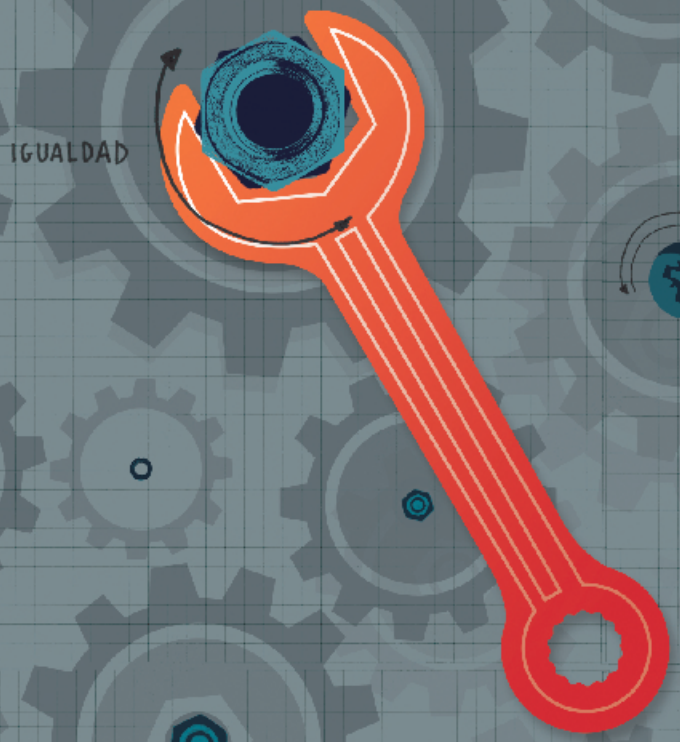
IACHR Inter-American Commission on Human Rights

Legal Standards: Gender Equality and Women's Rights



Organization of American States

IACHR Inter-American Commission on Human Rights

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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application

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PREFACE

This special edition of the report – *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* – includes the original text approved by the Inter-American Commission on Human Rights on November 3, 2011 and an update approved on January 26, 2015. The publication of this special edition has been spearheaded by Tracy Robinson, in her capacity as Rapporteur on the Rights of Women of the Inter-American Commission, in commemoration of the 20th anniversary of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).

LEGAL STANDARDS RELATED TO GENDER EQUALITY AND WOMEN'S RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: DEVELOPMENT AND APPLICATION

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EXECUTIVE SUMMARY AND INTRODUCTION

EXECUTIVE SUMMARY AND INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission", or the "IACHR") has ruled repeatedly on impunity for human rights violations as one of the main obstacles to observance of the rule of law in the region. This entails immediate and comprehensive obligations on the part of the states to fight this serious human rights problem.[1]

2. Despite the states' efforts, the IACHR has highlighted how the reality of the Americas continues to be marked by social inequality and obstacles in access to justice, helping perpetuate problems such as discrimination against women including its most extreme forms.[2] In this scenario of complex and pressing realities, the IACHR has consistently recommended to the states that they take concrete steps to ensure, first, the universality of the inter-American human rights system, and second, initiatives to carry out the decisions, recommendations, and orders of both the IACHR and the Inter-American Court of Human Rights (hereinafter "Inter-American Court"). The IACHR has emphasized that the legal development of standards in the context of the inter-American human rights system should be accompanied by efforts on the part of the states to implement them. At the same time, the IACHR has identified, as a key component of these efforts, the guarantee of *de jure* and *de facto* access to suitable and effective judicial remedies to overcome emblematic problems such as discrimination and violence against women.[3]

3. Accordingly, this report[4] seeks to analyze the degree of impact of the standards, recommendations, and decisions of the inter-American system in the case-law emerging from the countries of the Americas related to gender equality and women's rights. With this objective, a significant number of judicial judgments have been identified, handed down by various courts throughout the Americas, in which explicit reference has been made to the standards[5] of the inter-American human rights system on discrimination and violence with gender-specific causes.

4. The importance of the judicial judgments identified in this report is analyzed starting from the development of the standards of the inter-American human rights system on gender equality and women's rights, and in particular the legal standards set by the system on violence and discrimination against women. The IACHR considers that it is a crucial and appropriate moment for that analysis considering the significant development of the case-law of the inter-American system related to gender equality in the last 10 years; process which has been propelled by various pronouncements based on the American Convention on Human Rights (hereinafter the "American Convention"); the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"); and the Inter-American Convention on the

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1 IACHR, *Annual Report of the Inter-American Commission on Human Rights 2010*, OEA/Ser.L/V/II. Doc. 5, corr. 1, March 7, 2011, para. 1.

2 IACHR, *Annual Report of the Inter-American Commission on Human Rights 2008*, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, para. 8.

3 IACHR, *Access to Justice for Women Victims of Violence in the Americas,* OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 1.

4 The draft of the report *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* was approved by the Inter-American Commission on Human Rights on November 3rd, 2011, during its 143° Period of Session, without the favorable vote of the Commissioner Rodrigo Escobar Gil.

5 For the purposes of this report, the concept of "legal standards" is defined as a set of judicial decisions, thematic and country reports, and other recommendations adopted by the Inter-American Commission on Human Rights. The term "legal standards" also refers to the regional human rights treaties that govern the system, such as the American Convention and the Convention of Belém do Pará. The concept also refers to the judgments and advisory opinions issued by the Inter-American Court of Human Rights.

Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará"), among other inter-American instruments.

5. This report is the result of an initiative implemented by the IACHR – with the support of the government of Canada – to promote the development and application of the case-law and legal standards on gender equality and the rights of women in the Americas. As part of this project the IACHR has compiled information from various sectors on judicial decisions[6] adopted by domestic courts that address the principle of equality and non-discrimination in connection with gender equality and women's rights with a view to examining the impact of the relevant recommendations and decisions of the organs of the inter-American human rights system. This report has been launched by the current Rapporteur on the Rights of Women, Luz Patricia Mejía Guerrero.

6. In preparing this report, the IACHR circulated a questionnaire to the member states of the Organization of American States (OAS)[7] and civil society organizations, institutions from the academic sector, international organizations, and experts[8]; a significant number of judgments applying and analyses of the application of inter-American case-law domestically by the justice system and other sectors of governmental authority were received in response to that questionnaire. Those responses have been the main source for the drafting of this report.[9] In addition, the IACHR undertook desk research to identify judicial judgments handed down by different domestic courts that apply the precedent of the inter-American human rights system.

7. This report has several objectives. First, it analyzes and systematizes judgments that explicitly apply, in their considerations and resolution, the standards of the inter-American human rights system that have been adopted to advance gender equality and women's rights. Second, it has the purpose of promoting, with this analysis, the continuing use of standards from the inter-American human rights system by the judiciaries of the region. Third, it seeks to create a tool and exemplify for various sectors the use of inter-American human rights standards in advancing gender equality and women's rights. Fourth, it attempts to contribute to the consistent development of legal standards by the organs of the inter-American human rights system. Fifth, the IACHR has as a priority objective supporting the member states of the OAS in the fulfillment of their human rights obligations in relation to gender equality and women's rights.

8. With these objectives in mind, the IACHR's analysis in this report is based on various premises. The first is that the administration of justice is the first line of defense in the protection of human rights domestically, including women's rights. For that reason, the IACHR's consideration of the impact of the standards of the inter-American system linked to gender issues begins with the analysis of judicial decisions. The IACHR has also spoken out on the key role of the judicial branch in sending social messages advancing the protection and guarantee of human rights, in particular, the norms aimed at protecting sectors whose human rights are at

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6 In this report the term "court judgments" or "judicial judgments" is defined broadly, referring to rulings, judgments, recommendations, and other decisions issued by different judicial branch entities within a given country, including traditional and alternative justice systems, and specialized courts or tribunals. It also refers to decisions issued by federal or national and local courts.

7 The questionnaire was answered by the following states: Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Guyana, Mexico, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

8 Responses and inputs to the questionnaire were also received from the following institutions and experts on the issue: Commission on Gender Issues, Office of the Federal Human Rights Ombudsperson (Defensoría General de la Nación) of Argentina; Andrea Gastrón, M. Angela Amante, and Rubén Rodriguez; CLADEM Brazil; CLADEM La Paz, Bolivia; CLADEM Ecuador; Corporación Sisma Mujer, Colombia; Grupo de Información en Reproducción Elegida (GIRE), Mexico; Indian Law Resource Center; International Reproductive and Sexual Health Law Programme, University of Toronto; Laura Pautassi; Equipo Latinoamericano de Justicia y Género; Miguel Angel Antemate Mendoza, Universidad Nacional Autónoma de México ("UNAM"); Organización Nacional de Activistas por la Emancipación de la Mujer of Bolivia; PROMSEX; Women's Link Worldwide.

9 The questionnaire was also posted at the IACHR's website.

particular risk, such as women.[10] Nonetheless, it is noted that the judiciary is just one component of a state structure obligated to coordinate the efforts of all its sectors to respect and ensure human rights in general; principle which entails obligations for the states that go beyond the activities of the judicial branch.

9. The second is that the standards of the inter-American human rights system serve as a guide for the member states of the OAS on how to implement various obligations related to gender equality, and may operate as an important resource and instrument for the advocacy and monitoring work of civil society organizations, international organizations, and academia.

10. The third premise is that the standards of the inter-American human rights system are comprehensively defined in this report, as including decisions on the merits, thematic and country reports, other legal pronouncements of the IACHR, and the relevant judgments of the Inter-American Court. They also encompass the provisions contained in the framework instruments of the inter-American system, such as the American Declaration, the American Convention, and the Convention of Belém do Pará, among other inter-American human rights instruments relevant to gender equality and women's rights.

11. The Inter-American Commission recognizes the number of judgments received from state and non-state actors that make reference in their operative parts to inter-American and international human rights case-law. One important component of the judgments received makes reference to the American Convention, the Convention of Belém do Pará, the decisions on the merits of the Commission, the judgments of the Inter-American Court, and the country and thematic reports produced by the IACHR.

12. Nonetheless, the judicial decisions examined and the information collected reflects the still-limited and incipient application of inter-American human rights case-law by the judiciary in the countries of the Americas.[11] In addition, the gravity and pernicious and silent nature of the problems of discrimination and violence against women have been confirmed, along with the challenges entailed for these cases to reach and be processed by the justice systems throughout the hemisphere.[12]

13. The IACHR observes that the application of the standards of the inter-American human rights system throughout the Americas is a heterogeneous process that moves forward slowly. This requires specific, deliberate, and immediate efforts by the states to close the gap between the human rights commitments they have assumed and full and real protection of human rights.

14. The IACHR notes, as it has in prior reports, the importance of the efforts by the states to ensure that their judicial branches are trained in and informed of the precedents of the inter-American human rights system, and other international instruments of protection, and the importance of initiatives to raise awareness of the judicial officers on the human rights of women as they are recognized domestically, regionally, and internationally with a view to attaining bolstered protection for their rights.

15. This report is divided into three sections. The first section is focused initially on the issue of violence against women, describing the legal development concerning this problem in the

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[10] See, in general, IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria da Penha Fernandes* (Brazil), April 16, 2001.

[11] The State of Guyana reported, for example, in its response to the questionnaire, that: "There are no judicial decisions issued by courts at the national level in the last 10 years related to gender equality and the principle of non-discrimination." Nonetheless, the State provided information on a series of decisions issued by domestic courts addressing various human rights-related matters.

[12] The State of Paraguay indicated, for example, that "it is a reality that even though our country has ratified and undertaken to adopt the standards, decisions, and recommendations of the inter-American human rights system as regards equality, the statistics indicate that the incidence of violence has not diminished and that progress in the use of international instruments aimed at eradicating gender-based violence has not been sufficient for the statistics to show otherwise."

context of the inter-American human rights system. Then excerpts are presented of judgments that apply different components of the standards of the inter-American system to advance key principles related to gender equality and women's rights in the context of violence against women. The second section is focused on the issue of discrimination against women, first describing legal gains in the context of the regional system, followed by an analysis of excerpts of judgments that have advanced gender equality and women's rights. The last section presents some conclusions on the development and application of legal standards to date by the domestic courts and other public efforts by the states in the areas of discrimination and violence against women.

CHAPTER I
VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN

A. Introduction

16. The inter-American system has seen significant development of legal standards related to violence against women since 1994. Much of this evolution can be attributed to the adoption by the American states of the Convention of Belém do Pará in 1994, and to the influence of key instruments for addressing violence against women internationally, such as the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW") and General Recommendation 19 of the CEDAW Committee (hereinafter "CEDAW Committee") establishing that gender-based violence is included in the Convention's definition of discrimination.

17. Developments in this area have been reflected in pronouncements by various mechanisms of the inter-American human rights system, including the decisions on the merits of the IACHR and the judgments of the Inter-American Court on the issue; and the thematic and country reports. In addition, the IACHR has issued a series of precautionary measures to protect the life and integrity of defenders of women's rights from violent acts, particularly in the Colombian context.[13]

18. Some of the standards of the inter-American human rights system concerning the problem of violence against women can be summarized as follows:

- The close connection between the problems of discrimination and violence against women;
- The immediate obligation of the states to act with due diligence to prevent, investigate, and punish swiftly and without delay all acts of violence against women, committed by state and non-state actors;
- The obligation to ensure the availability of effective, adequate, and impartial judicial mechanisms for victims of sexual violence, which constitutes torture when committed by state agents;
- The obligation of the states to implement actions to eradicate discrimination against women and the stereotyped patterns of behavior that promote their treatment as inferior in their societies;
- The consideration of sexual violence as torture when it is perpetrated by state agents;
- The duty of the legislative, executive, and judicial organs to analyze, with strict scrutiny, all the statutes, regulations, practices, and public policies that establish differential treatment based on sex, or that may have a discriminatory impact on women in practice;
- The duty of the states to consider, in the policies they adopt to promote gender equality, the particular risk of human rights violations that women may face due to factors combined with their sex, such as age, race, ethnicity, and economic position, among others.

19. Following is a description of some of the most important legal developments related to the prevention, investigation, punishment, and reparation of acts of violence against women set forth in the standards of the inter-American human rights system. These will be discussed in

[13] See, for example, MC 319/09 Members of the Liga de Mujeres Desplazadas and the Youth League of the LMD; MC 339.09 Claudia Julieta Duque Orrego and María Alejandra Gómez Duque; MC 1/10 Women who have been displaced; MC 99/10 Corporación Sisma Mujer.

the following order: (a) decisions on the merits of the IACHR; (b) decisions of the Inter-American Court; (c) thematic reports; and (d) country reports.

1. Decisions on the merits of the IACHR

20. The IACHR's decisions on the merits on the question of violence against women have fostered significant legal development of several questions such as the close connection between violence against women and discrimination; sexual violence as torture; the concept of due diligence and its scope; and the response of the administration of justice and access to judicial mechanisms of protection, among others. Following is a presentation, by way of example, of some of the important pronouncements made in the IACHR's decisions on the merits.

21. This section discusses some examples of the most important pronouncements issued by the IACHR in its merits decisions by thematic area:

Violence, Discrimination and the Duty to Act with Due Diligence

22. The IACHR has issued a number of pronouncements highlighting the link between discrimination and violence against women and the duty of States to act with the due diligence required to prevent, investigate, sanction and offer reparations for these acts.

23. For example, in the IACHR's decision in the paradigmatic case of *Maria da Penha Maia Fernandes*, the Commission applied the Convention of Belém do Pará for the first time to hold that the State had failed to act with the due diligence required to prevent, punish, and eradicate domestic violence, for not having convicted or punished the perpetrator in the case for 17 years.[14] In this case, the petitioners claimed before the IACHR that the State of Brazil had failed for more than fifteen years to adopt effective and necessary measures to prosecute and sanction a domestic violence perpetrator, despite the reports presented by the victim to the authorities. As a result of these attacks, Maria da Penha has suffered from irreversible paraplegia and other ailments since 1983.

24. The Commission found in its merits report that the case of Maria da Penha was part of a general pattern of tolerance by the State and judicial inefficiency in cases of domestic violence.[15] The Commission was emphatic in declaring that the obligation of the State to act with due diligence goes beyond the obligation to prosecute and convict the persons responsible, and also includes the obligation "to prevent these degrading practices."[16] The Commission also found violations of Articles 8(1) and 25 of the American Convention on considering that more than 17 years had elapsed since the investigation began, and the process against the accused continued to be open, without any final judgment.[17] The Commission established that general judicial ineffectiveness creates an environment that facilitates domestic violence, as there is no socially perceived evidence of the will and effectiveness of the State as representative of society to punish such acts.[18] The Commission, in its report, issued a series of specific recommendations to the State to address the individual needs of the victim and the general pattern of tolerance.[19]

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[14] The Commission found in this case that the State violated the victims' right to an effective judicial remedy and to procedural guarantees in the context of Articles 8 and 25 of the American Convention, along with the general obligation to respect and ensure these rights under Article 1(1) of that instrument, as well as Article 7 of the Convention of Belém do Pará. See, IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria da Penha Fernandes* (Brazil), April 16, 2001, para. 60.

[15] IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria da Penha Fernandes* (Brazil), April 16, 2001, para. 55.

[16] IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

[17] IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria da Penha Fernandes* (Brazil), April 16, 2001, para. 38.

[18] IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

[19] The Commission issued a series of specific recommendations for the State, including: (1) complete swiftly and effectively the criminal prosecution of the person responsible for assault and attempted homicide to the victim's detriment; (2) conduct a

Sexual Violence and Access to Justice

25. The decisions on the cases of *Raquel Martín de Mejía*[20] and *Ana, Beatriz and Celia Gonzalez Perez*[21] marked the first time the IACHR addressed the concept of sexual violence as torture and access to justice for victims in the individual case system.

26. In the case of *Raquel Martín de Mejía*, the Commission found the Peruvian State responsible for violations of the right to humane treatment under Article 5 of the American Convention and the Inter-American Convention to Prevent and Punish Torture.[22] The petitioners alleged before the Commission that on June 15, 1989, a group of armed persons with uniforms of the Peruvian Army forcibly entered the house of Raquel Martín and Fernando Mejía in Oxapampa accusing them of being subversives and members of the *Movimiento Revolucionario Tupac Amarú*. After beating Fernando Mejía and placing him in a pick-up truck owned by the government in the presence of his wife, the armed group left. Minutes later, the person in command of the operation returned to the house on two different occasions, raping Raquel Martín de Mejía each time. Raquel Martín de Mejía and her representative reported the facts, but after the investigations ordered by the Provincial Prosecutor of Oxapampa were initiated, the victim received anonymous death threats of death if she continued to pursue the investigation.

27. On addressing the rape, the Commission determined in its decision that the three elements set forth in the Inter-American Convention to Prevent and Punish Torture to prove the existence of torture were all present: (1) "an intentional act through which physical and mental pain and suffering is inflicted on a person"; (2) "committed with a purpose," and (3) "by a public official or by a private person acting at the instigation of the former." On analyzing these elements, the Commission took into account the physical and psychological suffering caused by rape, the possibility of the victim suffering "ostracism" if she reported these acts, and the way in which the rape could have been perpetrated with the intent of punishing and intimidating the victim.[23] In addition, in the case of *Raquel Martín de Mejía* the Commission found that the right to judicial protection enshrined in Article 25 of the American Convention should have been understood as "the right of every individual to go to a tribunal when any of his rights have been violated" and to "obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation."[24]

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serious, impartial, and exhaustive investigation to determine responsibility for irregularities or unjustified delays that impeded the swift and effective prosecution of the person responsible; (3) adopt, without prejudice to the possible actions against the civilian responsible for the assault, measures necessary for the State to assign the victim adequate symbolic and material reparation for the violations established here, in particular its failure to offer a swift and effective remedy; and (4) to continue and deepen the process of reforms to prevent state tolerance and discriminatory treatment with respect to domestic violence against women in Brazil, among other recommendations.

20 IACHR, Report on the Merits No. 5/96, Case 10,970, *Raquel Martín de Mejía* (Peru) of March 1, 1996.

21 IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001.

22 Finally, the IACHR concluded that the Peruvian State was responsible for several violations of the American Convention to the detriment of Raquel Martín de Mejía, including a violation of the general obligation to respect and ensure the rights contained in that instrument (Article 1(1)); the right to humane treatment (Article 5); the right to the protection of honor and dignity (Article 11); the right to due process of law (Article 8); and the right to an effective remedy (Article 25). IACHR, *Raquel Martín de Mejía v. Peru,* Case 10,970, IACHR, Report on the Merits 5/96, OEA/Ser.L./V/II.91, doc. 7 rev. (1996). Section VI. Conclusions.

23 IACHR, Report on the Merits No. 5/96, Case 10,970, *Raquel Martín de Mejía* (Peru) of March 1, 1996. Section V. General Considerations, B. Considerations on the merits. 3. Analysis.
The Commission found, in the context of this case, several violations of the American Convention to the detriment of Raquel Martín de Mejía, including a violation of the general obligation to respect and ensure the rights contained in that instrument (Article 1(1)); the right to humane treatment (Article 5); the right to protection of honor and dignity (Article 11); the right to due process of law (Article 8); and the right to an effective remedy (Article 25). See Section IV. Conclusions.

24 IACHR, Report on the Merits No. 5/96, Case 10,970, *Raquel Martín de Mejía* (Peru) of March 1, 1996. Section V. General Considerations, B. Considerations on the merits. 3. Analysis.

Intersection of Different Forms of Discrimination

28. The Commission has also began to highlight in its standards the duty of States to take special account of the inextricable link between the factors that expose women to discrimination along with their sex, such as their age, race, ethnicity, and economic position, among others. The principle of intersectionality has been established in Article 9 of the Convention of Belem do Para, since discrimination and violence do not always affect women in the same measure. There are women that are exposed to the violation of their human rights on the basis of more than one risk factor. Some examples highlighted by the Commission are the alarming situation of girls and indigenous women in the guarantee and exercise of their human rights.

29. For example, in the case of *Ana, Beatriz and Celia González Pérez*, the Commission found multiple violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture, concluding that the State had breached its duty to ensure the rights, under Article 1(1) of the American Convention, which establishes the obligation of the states parties to guarantee the exercise of the rights and liberties recognized in that instrument to the persons under their jurisdiction.[25] In this case, the petitioners alleged before the IACHR that sisters Ana, Beatriz, and Celia González Pérez, indigenous Tzeltal women from the state of Chiapas, Mexico, were separated from their mother and illegally detained, raped, and tortured by a group of soldiers for two hours. They also indicated that the crimes remained in impunity due to the fact that the cases were sent to the military jurisdiction, which clearly did not have subject matter jurisdiction and lacked the impartiality necessary for establishing the facts, as required by due process.

30. The Commission indicated – quoting the judgment of the Inter-American Court in the *Velázquez Rodríguez* case – that the obligation of guarantee contained in Article 1(1) of the American Convention includes the duty to organize the governmental apparatus and, in general, all the structures by which the exercise of government power is manifested, so that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, the states parties have the legal duty to prevent, investigate, and punish violations of the rights protected in the American Convention.[26] The Commission also concluded that the pain and humiliation that the women suffered had been aggravated by the failure of the State to consider their status as indigenous women and their different world view and language in the judicial response to the facts.

31. The Commission also held that acts of rape committed by soldiers of the three sisters also constituted torture[27] and observed that the case was characterized by total impunity: more than six years after the date on which those human rights violations took place, the State had not abided by its duty to prosecute and punish the persons responsible.[28]

2. Decisions of the Inter-American Court of Human Rights

32. The IACHR's decisions on the merits mentioned were followed by a group of cases decided and forwarded by the Commission to the Inter-American Court from 2006 to 2009. This process has culminated in emblematic judgments that have set legal standards concerning violence against

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25 IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001, para. 85.

26 IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001, para. 166.

27 IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001, paras. 47-49.

28 Impunity has been defined as 'the failure by States to fulfill their obligation to investigate the violation of rights and to impose the appropriate measures on the perpetrators, in particular from a legal standpoint, so that they can be prosecuted and receive the appropriate penalties; to guarantee victims effective resources and remedy for prejudice suffered; and to take the measures necessary to avoid the repetition of these violations." IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001, para. 86.

women in the inter-American human rights system. Following is a description of several of these judgments and their most important pronouncements as relevant to this report.

Definition of Sexual Violence and its Link to the Integrity of Women

33. The Inter-American Court of Human Rights first specifically addressed violence against women in its judgment in the case *Castro-Castro Prison v. Peru*[29]. On September 9, 2004, the Inter-American Commission submitted an application to the Court against the State in relation to various violations committed during "Operativo Mudanza 1" in the Castro-Castro Prison in Peru, during which the State allegedly caused the death of at least 42 inmates, wounded 175 inmates, and subjected another 322 inmates to cruel, inhuman, and degrading treatment. The facts also refer to the alleged cruel, inhuman, and degrading treatment experienced by the alleged victims subsequent to "Operativo Mudanza 1." In its judgment, the Court considered it proven that the attacks began specifically in the pavilion of the prison that was occupied by the women prisoners, including women who were pregnant.

34. In that judgment the Court analyzed the scope and consequences of the crime of sexual violence suffered by women under the custody of the state. In this regard, the Court found a violation of Article 5 of the American Convention and interpreted its scope taking the Convention of Belém de Pará as a reference for interpretation.[30] In addition, the Court held for the first time that gender-based violence is a form of discrimination according to the precedents of the Committee on the Elimination of Discrimination against Women.[31] It is also noteworthy that the Court in this judgment offered an expansive definition of the phenomenon of "sexual violence" considering that: (1) "sexual violence consists of actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever."[32] Finally, the Court referred to the obligation to act with due diligence in cases of violence against women, set forth in Article 7(b) of the Convention of Belém do Pará to determine state responsibility for violating the duty to investigate and punish contained at Articles 8(1) and 25 of the American Convention.[33]

Due Diligence and Acts Committee by Private Actors

35. The analysis of the Court in its judgment in the case of *Castro-Castro Prison v. Peru* was followed by the first judgment of the Court to comprehensively address women's rights, in the case of *González et al. ("Cotton Field") v. Mexico.*[34] On November 4, 2007, the Inter-American Commission presented an application to the Inter-American Court alleging that Mexico was internationally responsible for irregularities and delays in the investigation into the disappearances and subsequent death of Laura Berenice Ramos Monárrez (17 years old), Claudia Ivette González (20 years old), and Esmeralda Herrera Monreal (15 years old), in the city of Ciudad Juárez, state of Chihuahua, Mexico.

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[29] I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru,* Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160.

[30] I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru,* Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 276.

[31] I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru,* Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 303.

[32] I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru,* Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160*, para. 306. See* ICTR*, Case of Prosecutor v. Jean-Paul Akayesu*. *Judgment of September 2, 1998. Case No. ICTR-96-4-T, para. 688.*

[33] I/A Court H.R., *Case of Miguel Castro-Castro Prison v. Peru,* Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 470(6).

[34] I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205.

36. In essence, the Commission and the petitioner organizations[35] argued during the litigation before the Court that in 2001 the three women had been reported by their families as missing, and that their bodies were found weeks later in a cotton field in Ciudad Juárez with signs of sexual violence and other forms of physical abuse.[36] They asserted, among other allegations,[37] that the authorities had breached their duty to act with the due diligence required to conduct a prompt and exhaustive investigation into the disappearance and death of the three victims, based on discriminatory sociocultural patterns that usually operate to the detriment of women, resulting in impunity in those cases.[38] The parties argued that the public servants in charge did not accord priority to the search for the victims and investigation into their deaths due to forms of discrimination against women and stereotypes regarding their behavior and lifestyle.[39]

37. On November 16, 2009[40], the Inter-American Court found the State responsible for several violations of the American Convention on Human Rights and the Convention of Belém do Pará to the detriment of the three victims and their next-of-kin.[41] Specifically, the Court found

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[35] In this case, the Commission asked the Court to find that the State was responsible for violating several rights contained in the American Convention to the detriment of the three victims, including the right to life (Article 4), the right to judicial guarantees (Article 8(1)), the right to judicial protection (Article 25(1)), and the rights of the child (Article 19) of Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez, all in relation to the general obligation to respect and ensure the human rights, contained in Article 1(1) of the same instrument; and the duty to adopt legislative or other provisions, as necessary, pursuant to Article 2 of the same treaty. The Commission also alleged the violation of the right of women to live free from violence established in Article 7 of the Convention of Belém do Pará. As for the victim's next-of-kin, the Commission alleged violations of the rights to humane treatment (Article 5) and violations of judicial guarantees and judicial protection (Articles 8(1) and 25(1)) of the American Convention. Finally, the Commission and the victims' representatives presented arguments on the violation of the rights of the three victims to humane treatment (Article 5), personal liberty (Article 7), and privacy, dignity, and honor (Article 11), as well as Articles 8 and 9 of the Convention of Belém do Pará. See, IACHR, *Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12,496, 12,497, and 12,498) against the United Mexican States*, November 4, 2007.

[36] IACHR, *Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12,496, 12,497, and 12,498) against the United Mexican States*, November 4, 2007, paras. 68-138. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, paras. 2-4.

[37] The Commission and the representatives noted before the Court that the three cases exemplified and were part of a pattern of disappearances of women in Ciudad Juárez since 1993, often accompanied by omissions and irregularities by the state authorities in the investigation and sanction of these cases because the victims were women, and that this gender-based discrimination had fostered their impunity and repetition. They also alleged that the victims were constantly abused, harassed, and intimidated by the authorities during their efforts to give impetus to and cooperate with the investigations.

[38] IACHR, *Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12,496, 12,497, and 12,498) against the United Mexican States*, November 4, 2007, paras. 139-251. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, paras. 2-4.

[39] IACHR, *Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12,496, 12,497, and 12,498) against the United Mexican States*, November 4, 2007, paras. 139-251. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, paras. 2-4.

[40] I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205.

[41] The Court found violations of the American Convention to the detriment of the three victims, including the obligation to ensure the rights set forth in Article 1(1), and the duty to adopt the legal provisions necessary to uphold the rights and freedoms contained in the Convention, provided for by Article 2, the right to life protected by Article 4(1), the right to humane treatment as per Articles 5(1) and 5(2), the right to personal liberty pursuant to Article 7(1), and Articles 7(b) and 7(c) of the Convention of Belém do Pará. In addition, the Court found violations of the rights of the child of Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez pursuant to Article 19 of the American Convention. As regards the victims' next-of-kin, the Court considered that the State was responsible for the violations of judicial guarantees and judicial protection set forth in Articles 8(1) and 25(1) of the American Convention in relation to Articles 1(1) and 2 of the same instrument; the right to humane treatment set forth at Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1); and Articles 7(b) and (c) of the Convention of Belém do Pará. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, para. 602(4-9).
The Court ruled that it could not attribute international responsibility to the State for violations of the right to life, humane treatment, and personal liberty, contained in the American Convention on Human Rights, stemming from the breach of the obligation of respect contained in Article 1(1) thereof, or about the right of protection of honor and dignity, enshrined in Article

violations of the general duty to ensure the human rights of the three victims, on not acting with the due diligence required to protect their rights to life, humane treatment, personal liberty, and their right to be free from violence, and conduct an adequate and effective investigation into their disappearances and homicides[42] The Court also found violations of the victims' rights to live free from discrimination based on gender; the rights of the child of two of the victims; and a violation of the right to humane treatment and access to justice of the victims' next-of-kin.[43]

Indigenous Women, Sexual Violence, and Particular Barriers in their Access to Justice

38. In May 2007, the Inter-American Commission referred the case of *Inés Fernández Ortega* to the Inter-American Court, alleging the international responsibility of the State for the rape, torture, and lack of access to justice for Inés Fernández Ortega, an indigenous 27-year-old woman from the Me'phaa community (Tlapaneco community)[44], in Guerrero, México. In this case, the Commission[45] and the victim's representatives[46] alleged before the Court that members of the Mexican Army had raped Inés Fernández Ortega in her home on March 22, 2002.[47] They also indicated that on March 24, 2002, Inés Fernández, with the support of an attorney and an interpreter, reported the crime in the regular jurisdiction.[48] The Commission and the representatives argued that even though the victim alleged the crime to the authorities, they did not conduct an investigation and punish the perpetrator with due diligence.[49] In addition, they argued that the authorities in charge engaged in various combined forms of discrimination against the victim, due to her being a woman, her ethnic or racial origin, and/or her socioeconomic status.[50] In general, they highlighted the additional challenges that indigenous women victims of violence face to obtain an adequate and effective access to justice when they are victims of sexual violence.[51]

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11 of the American Convention. I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, para. 602(3.10).

42 I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, paras. 286, 293.

43 I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, para. 100.

44 I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215, para. 44.

45 The Commission alleged that the State had violated the following provisions of the American Convention to the detriment of Inés Fernández Ortega: the right to humane treatment enshrined in Article 5, the right to an impartial trial under Article 8, the right to honor and privacy enshrined in Article 11, and the right to judicial protection contained in Article 25, in relation to the general obligation to respect and ensure established in Article 1(1). In addition, the Commission alleged violations of Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission also alleged that the Mexican State was responsible for violations of the rights to humane treatment under Article 5, the right to judicial guarantees enshrined in Article 8, and the right to judicial protection under Article 25, in relation to Article 1(1) of the Convention, with respect to several members of the family of Inés Fernández Ortega: Fortunato Prisciliano Sierra (her husband), Noemí, Ana Luz, Colosio, Nélida, and Neptalí Prisciliano Fernández (her children), María Lidia Ortega (her mother), and Lorenzo and Ocotlán Fernández Ortega (brothers). Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12,580) against the United Mexican States, May 7, 2009, para. 5(a-d).

46 The Organización Indígena de Pueblos Tlapanecos AC ("OPIT") and the Centro de Derechos Humanos de la Montaña "Tlachinollan" AC, and CEJIL, were the victims' representatives before the Court. The representatives argued before the Court that the State also violated the obligation to adopt legislative or other provisions as necessary to uphold the rights and freedoms contained in that instrument pursuant to Article 2; the right to freedom of association contained in Article 16, and the right to equality before the law pursuant to Article 24. I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215, para. 4.

47 IACHR, *Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12,580) against the United Mexican States, May 7, 2009*, para. 55.

48 IACHR, *Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12,580) against the United Mexican States, May 7, 2009*, paras. 55, 58.

49 IACHR, *Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12,580) against the United Mexican States, May 7, 2009*, para. 2.

50 IACHR, *Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12,580) against the United Mexican States, May 7, 2009*, paras. 178-179.

51 IACHR, *Application to the Inter-American Court of Human Rights in the case of Inés Fernández Ortega (Case 12,580) against the United Mexican States, May 7, 2009*, paras. 178-179.

39. The Court found the State responsible for the violation of several rights contained in the American Convention to the detriment of Inés Fernández Ortega, including the right to humane treatment, to dignity and a private life, not to be subject to arbitrary and abusive interference in the home, to a fair trial and judicial protection, and the right of access to justice without discrimination. The Court also found a violation of the right to be free from violence under the Convention of Belém do Pará, and a violation of the right to humane treatment and the right not to be subject to arbitrary or abusive interference in the home to the detriment of Inés Fernández Ortega's husband and their children.[52]

40. The Court also affirmed several important principles linked with the States' obligation to act with due diligence and to guarantee an adequate access to justice in cases of sexual violence: a) that sexual violence constitutes a paradigmatic form of violence against women with consequences that transcend the victim; b) that a rape can constitute torture even when it only consists of one act or when it occurs outside of state installations, if there is intentionality, severe suffering, and an end on the part of the perpetrators; c) that a rape violates values and essential aspects of the private life of a person and signifies an interference with their sexual life, challenging their right to freely adopt personal and intimate decisions; d) it is particularly key for the authorities in charge of an investigation of an act to rape to pursue it with determination and efficacy, taking into account the duty of society to reject all violence against women, and the obligations of the State to eradicate it and to bring trust to the victims in the state institutions in charge of their protection; e) that the investigation in cases of sexual violence should prevent the revictimization and the reliving of the profound traumatic experience of the victim; and f) that the declaration of the victim about an act of sexual violence is key in the investigation, judgment and sanction of these acts.

Multiple Forms of Discrimination

41. On August 2, 2009, the Commission also filed an application with the Inter-American Court of Human Rights alleging that the Mexican State was responsible for the lack of access to justice for Valentina Rosendo Cantú, an indigenous Me'phaa woman (Tlapaneco community) 17 years of age when the events occurred. The Commission[53] and the representatives[54] argued that

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[52] The Court found a number of violations of the rights contained in the American Convention to the prejudice of Inés Fernández Ortega. The Court held that the State was responsible for violating the rights to humane treatment, dignity, and private life, enshrined, respectively, at Articles 5(1) and 5(2), 11(1), and 11(2) of the American Convention in relation to Article 1(1) of the same instrument; Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture; and Article 7(a) of the Convention of Belém do Pará. The Court also found violations of the rights to judicial guarantees and protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of said instrument, and the duty established in Article 7(b) of the Convention of Belem do Pará. The Court also found that the State failed in its duty to guarantee an access to justice without discrimination of Inés Fernández Ortega under Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of said instrument. Finally, the Court found violations of the right to humane treatment, enshrined in Article 5(1) of the American Convention in relation to its Article 1(1), to the detriment of the husband of Inés Fernández Ortega and their children, and violations to the right not to be subject to arbitrary or abusive interferences in the home, enshrined in Article 11(2) of the American Convention to the detriment of Inés Fernández Ortega and her husband and children. See, I/A Court H.R., Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215, para. 308 (3,4,6,7).

[53] The Inter-American Commission asked the Court to find the State responsible for violating Articles 5 (Humane Treatment), 8 (Right to a Fair Trial), 25 (Judicial Protection), 11 (Protection of Honor and Dignity), and 19 (Rights of the Child) of the American Convention, in relation to the general obligation to respect and ensure human rights established in Article 1(1) of the same instrument to the detriment of Ms. Rosendo Cantú. It also asked that the State be found responsible for the violation of Article 5 (Humane Treatment) of the Convention in relation to Article 1(1) to the detriment of Valentina Rosendo Cantú's daughter. In addition, it indicated that Mexico was responsible for the violation of Article 7 of the Convention of Belém do Pará and of Articles 1, 6, and 8 of the Convention against Torture, to the detriment of Ms. Rosendo Cantú. See, *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* para. 5.

[54] The Organización del Pueblo Indígena Tlapaneco/Me'phaa ("OPIM"), the Centro de Derechos Humanos de la Montaña Tlachinollan A.C., and CEJIL, the representatives in this case before the Court, agreed substantially with the violations alleged by the Commission. They also alleged other violations of the human rights contained in Articles 5 (right to humane treatment), 11

Valentina Rosendo Cantú was raped by members of the Mexican Army on February 16, 2002, when washing clothes in a creek near her home.[55] They indicated that Valentina Rosendo Cantú reported the crime to the prosecutorial authorities on March 8, 2002[56], and that on February 18, 2002, accompanied by her husband, she went to the public health clinic in Caxitepec for medical care[57], yet the physician in turn refused to treat her, alleging fear of the Army.[58] On February 26, 2002, she went to the Hospital Central in Ayutla. After traveling eight hours on foot she was not given medical care because they told her she needed to have an appointment.[59] The next day, after requesting the appointment, a physician examined only her stomach, and refused to perform other exams because there was no female physician. Even though the crime was reported to the civilian authorities, the matter was ultimately sent to the military jurisdiction, where it remains to this day; the persons responsible have not been investigated or punished.[60]

42. The Court found several violations of the American Convention to the detriment of Valentina Rosendo Cantú, including her rights to humane treatment, dignity and privacy, judicial protection and judicial guarantees, access to justice without discrimination, and her right to special protection as a child. The Court also found a violation of the right to be free from violence under the Convention of Belém do Pará.[61] Finally, it also found that the State was responsible for violating the right to humane treatment of Valentina Rosendo Cantú's daughter, for the consequences she suffered due to these events.[62]

43. As in the case of Inés Fernández Ortega, the Court in the case of Valentina Rosendo Cantú presented important considerations related to the multiple forms of discrimination and violence that an indigenous woman can suffer based on her sex, race, ethnicity, and economic position. The Court recognized the context of militarization in Guerrero and its particular effect on the women that form part of indigenous communities. It established that violence against women transcends all social sectors independent of their class, race, ethnicity, and income level,

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(protection of honor and dignity), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, to the detriment of the next-of-kin of Valentina Rosendo Cantú; the violation of Article 24 (right to equality before the law), and of Article 2 (duty to adopt legislative and other measures necessary to give effect to the rights contained in the American Convention); in relation to Articles 8 and 25 of the American Convention; 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article 7 of the Convention of Belém do Pará, to the detriment of Valentina Rosendo Cantú. See, I/A Court H.R., *Case of Rosendo Cantú and other v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010. Series C No. 216, paras. 3 and 4.

55 IACHR. *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* para. 33.

56 IACHR. *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* para. 33.

57 IACHR. *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* para. 35.

58 IACHR. *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* para. 35.

59 IACHR. *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* para. 37.

60 IACHR. *Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú et al. (Case 12,579) against the United States of Mexico,* paras. 38, 59.

61 The Court found that the State was responsible for the violation of the rights to humane treatment, dignity, and privacy, enshrined, respectively in Articles 5(1) and 5(2), 11(1), and 11(2) of the American Convention on Human Rights, in relation to Article 1(1) of the same Convention, and Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture. It also found the State responsible for the violation of Articles 7(a) and 7(b) of the Convention of Belém do Pará and the rights of the child under Article 19 of the American Convention, to the detriment of Ms. Rosendo Cantú. The Court also found the State responsible for the violation of the rights to judicial guarantees and protection under Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of the same, and the right to guarantee access to justice free from discrimination established in the same dispositions, in relation to Article 1(1) of the same instrument. The State was also held responsible for the violation of the right to personal integrity of Valentina Rosendo Cantu's daughter under Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument. See, I/A Court H.R., *Case of Rosendo Cantú and other v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010 Series C No. 216, para. 295 (3 - 8).

62 I/A Court H.R., *Case of Rosendo Cantú v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 216, paras. 37-139, 295 (4).

and highlighted the duty of States to abstain from direct and indirect discrimination. Finally, it held that to guarantee the access to justice of members of indigenous communities, according to Article 1(1) of the American Convention, the States should adopt protection measures taking into account their particularities, economic and social characteristics, their situation of special vulnerability, their customs and values.

Violence against Women in the context of an Armed Conflict

44. Subsequently, on July 30, 2008, the Inter-American Commission presented an application to the Court against the State of Guatemala in the case of the *Dos Erres Massacre v. Guatemala*. The application addressed the alleged lack of due diligence in the investigation, prosecution, and punishment of the persons responsible for the massacre of 251 inhabitants of the community of Las Dos Erres, La Libertad, department of Petén, from December 6 to 8, 1982. The inhabitants of the place included children, women, and men. It was alleged that many of the women had been raped and beaten to the point of suffering miscarriages. In 1994 investigations were initiated into that massacre. When the application was filed with the Court, there had been no exhaustive investigation, prosecution, or punishment of those responsible.[63] The Court considered proven in its analysis that from 1962 to 1996 there was an internal armed conflict in Guatemala that took a large toll in terms of the human, material, institutional, and moral costs.

45. The Court, in its judgment of November 24, 2009, found several violations of the American Convention; it concluded that the investigation in the domestic jurisdiction did not refer to other facts such as violence against women, among other findings. In this respect, the Court found, by way of contextual information, that "during the armed conflict [in Guatemala] women were particularly chosen as victims of sexual violence." Reiterating the precedent in the case of the *Plan de Sánchez Massacre v. Guatemala*, the Court established as a proven fact that the "rape of women was a State practice, executed in the context of massacres, directed to destroying the dignity of women at a cultural, social, family, and individual level."[64] In addition, the Court noted that "the lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns, constitutes a breach of the State's obligations in relation to grave human rights violations, which infringe non-revocable laws (*jus cogens*) and generate obligations for the States such as investigating and punishing those practices, in conformity with the American Convention and in this case in light of the [Inter-American Convention to Prevent and Punish Torture] and the Convention of Belém do Pará."[65]

3. Thematic Reports

46. Much of what has been developed in the individual cases on violence against women has been supplemented by pronouncements by the IACHR on the issue in the context of thematic reports.

47. For example, in its report on *Access to Justice for Women Victims of Violence in the Americas*[66] the IACHR offers an assessment of the main obstacles women face when they attempt to gain access to effective judicial protection to remedy acts of violence. In addition, the IACHR reaches conclusions and makes recommendations with a view to the states acting with due diligence to offer an effective and timely judicial response to these incidents. In the report, the IACHR adopts a series of key positions on the prosecution of cases involving violence against women,

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63 I/A Court H.R., Case of the "*Las Dos Erres*" Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009. Series C No. 211, para. 2.

64 I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009. Series C No. 211, para. 139.

65 I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009. Series C No. 211, para. 141.

66 IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

setting important standards for the states. Among the most important, the IACHR emphasizes the duty of the states to act with the due diligence required in the face of acts of violence against women[67] whether committed by state agents or private persons; the duty to conduct a prompt and effective investigation into acts of violence; the obligation to eradicate discriminatory sociocultural patterns that may influence the work of prosecutors, judges, and other judicial officers in the prosecution of cases of violence against women; the duty to ensure that the action of the justice system is impartial, independent, and free from discrimination; and the duty to ensure that the victims' family members are treated with dignity in the justice system.

48. In its recent report on *Access to Maternal Health Services from a Human Rights Perspective*[68], the IACHR also emphasized the link between women's maternal health and forms of violence against women, identifying practices in the provision of services, such as denying a woman the medical care she needs when she lacks of the authorization of her partner, or forced sterilization without consent, as examples of forms of violence against women.[69] In the report the IACHR underscored the priority that should be assigned to timely access to effective judicial remedies to ensure that women have a remedy when they are victims of violations of their human rights in this area.[70]

49. In its thematic reports the IACHR has also highlighted the reinforced obligation of the States to adopt measures of protection for groups of women at particular risk of violation of their human rights based on more than one factor combined with their sex, including girls, Afrodescendent girls and women, indigenous girls and women, migrant girls and women, and women human rights defenders, among other groups.[71]

4. Country reports

50. In several reports on specific countries the IACHR has also highlighted the link between the problem of discrimination and violence against women. The IACHR has held that violence against women is a clear manifestation of gender-based discrimination[72]; it has described it as a human rights problem[73]; and it has commented on its impact on the exercise of other human rights.[74] In addition, the Commission has concluded on many occasions that violence against women is an expression of social customs that relegate women to a position of subordination and inequality, therefore placing them at a disadvantage compared to men.[75]

51. In its country reports the IACHR has also recognized several distinct aspects of states' obligations relating to violence against women. For example, in the IACHR's report on *The*

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67 The duty to act with due diligence and its components in the face of violence against women have been discussed in several general thematic reports, such as, for example, IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V.II. Doc. 57, December 31, 2009, paras. 47-49.

68 IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010.

69 IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 75.

70 IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 20.

71 IACHR, *Report on the Situation of Human Rights Defenders in the Americas,* OEA/SER.L/V/II.124 Doc. 5 rev. 1, March 7, 2006.

72 IACHR, *Second Report on the Situation of Human Rights in Peru* (2000), p. 18; *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres* (2009), para. 43.

73 "It has been accorded priority in the region as such, with the conviction that its eradication is essential to ensure that women may fully and equally participate in all spheres of national life. Violence against women is a problem that affects men, women and children; it distorts family life and the fabric of society, with consequences that cross generations. Studies have documented that having been exposed to violence within the family during youth is a risk factor for perpetrating such violence as an adult. It is a human security problem, a social problem and a public health problem." See, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination,* 2003, para. 122.

74 IACHR, *Violence and Discrimination against Women in the Colombian Armed Conflict,* 2006, para. 29; IACHR, *Report on Haiti,* 2009, para. 85; IACHR, *The Situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination*, 2003, para. 120.

75 See also, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V.II.Doc. 68, January 20, 2007, section on Violence and Discrimination, p. 26; *Report on Haiti,* 2009, para. 44.

situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination, the IACHR stated important principles regarding the components of the states' duty to act with the due diligence required to take on violence against women. Among other points, it made special note of the interconnectedness of access to justice, due diligence, and the duty of prevention; the duty to make reparation for human rights violations; prevention as key for eradicating violence against women and all forms of discrimination[76]; and the importance of training persons in charge of responding to crimes of violence against women.[77]

52. The Commission also noted in its *Report on the Rights of Women in Chile*, the obligation of states to "take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that sustain the persistence and tolerance of violence against women."[78] In its report *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*, the IACHR also established the need "to give priority attention to designing a comprehensive and coordinated policy aimed at eliminating the de jure and de facto barriers that prevent women from having access to effective remedies and mechanisms for judicial protection, especially where violence against women is concerned."[79]

53. The IACHR has also issued a series of pronouncements on violence against women in peacetime and in the context of an armed conflict. In its reports on Colombia (2006)[80] and Haiti (2009)[81], the Commission recognized that (a) "the responsibility of the State to act with due diligence to prevent the infringement of women's human rights in times of peace and conflict has a comprehensive nature"[82]; (b) "The State is directly responsible for the acts of discrimination and violence perpetrated by its agents, as well as those committed by non-state actors and private third persons with the tolerance or acquiescence of the State"[83]; and that (c) "In addition, the obligation of the State is not limited to "the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices."[84]

54. In its report on Colombia in particular, the IACHR observed that: "Within the armed conflict, all the circumstances that have historically exposed women to discrimination and to receive an inferior treatment – above all their bodily differences and their reproductive capacity, as well as the civil, political, economic and social consequences of this situation of disadvantage – are exploited and manipulated by the actors of the armed conflict in their struggle to control territory and economic resources. A variety of sources, including the United Nations, Amnesty International and civil society organizations in Colombia have identified, described, and documented many ways in which the rights of women are infringed upon in the context of the armed conflict because of their condition as women."[85]

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[76] IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination, 2003*, para. 154.

[77] IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination 2003*, para. 155.

[78] IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, 2009, para. 42.

[79] IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia* (2007).

[80] IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia* (2006), para. 30.

[81] IACHR, *The Right of Women in Haiti to be Free from Violence and Discrimination* (2009), para. 86.

[82] The principle of due diligence was established by the Inter-American Court of Human Rights in its judgment in the case of *Velásquez Rodríguez*, by stating: "The second obligation of the States Parties is to 'ensure' the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction…. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention…." I/A Court H.R., *Case of Velásquez Rodríguez,* Judgment of July 29, 1988. Series C No. 4, para. 166.

[83] I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia.* Judgment of September 15, 2005. Series C No. 134, para. 178.

[84] IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

[85] IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia,* 2006, para. 46.

B. Analysis of judgments that apply the legal standards of the inter-American human rights system

55. The application by the States of the standards presented on violence against women has been mixed in terms of legislation and policies as well as judicial judgments, as will be exemplified in this section. Nonetheless, the progress and increased knowledge on the part of the judiciary of the precedents in the inter-American system are illustrated in the number of judgments received by the IACHR throughout the implementation of this project. Apart from the judgments received that explicitly cite and apply the inter-American instruments and precedents, the IACHR also received a significant and noteworthy number of judgments that have applied the standards of the universal human rights system – contained in instruments such as CEDAW, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, among others.

56. Following is a review of excerpts of judgments issued by a variety of countries throughout the Americas that explicitly apply inter-American instruments such as the American Convention and the Convention of Belém do Pará to resolve matters related to: (a) the problem of domestic violence; (b) the link between discrimination and violence; (c) the duty to act with due diligence; (d) access to justice; (e) the nature, definition, and extent of sexual violence; (f) women who have been forcibly displaced; (g) violence and women's economic, social and cultural rights; (h) homicides and violence against women; (i) human trafficking; (j) divorce; and (k) physical and psychological violence. The judgments and excerpts are presented under each of the categories mentioned.

The problem of domestic violence

- *Imminent Acts of Violence: Case No. 31,258 "B., M.P. v. G., R.A. re: protection from family violence," Family Court No. 3, Judicial Department of Lomas de Zamora (July 20, 2006), Argentina*[86].

57. Through this decision and by way of follow-up to a protective measure, Family Court No. 3 of the Judicial Department of Lomas de Zamora sought the return to the home of a woman, M.P.B. – a victim of domestic violence – with her two minor children. In addition, her husband, R.A.G., was ordered to not pass "a perimeter of 300 meters around the family home, the workplace of the wife, and the children's school."

58. The decision addresses the problem of domestic violence. It characterizes it as a human rights problem and as a social phenomenon. That analysis makes reference to the case of *Maria Da Penha Maia Fernandes v. Brazil*, and to the report of the IACHR on *The situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination*. Following are some excerpts:

> "… special mention should be made of the legal reproach that domestic violence merits – as a form of gender violence – in the international, regional, federal, and provincial legal system. It has been found by the Inter-American Commission on Human Rights to be a violation of human rights (Final Report No. 54/01 of case 12,051, April 16, 2001, captioned *Maria da Penha Maia Fernandes v. Brazil*). … The normative standard par excellence on the subject is set by the concept of violence against women at Article 1 of the Convention of Belém do Pará. The issue of family violence should be interpreted in the context of the international and

[86] The Commission has received information from the Equipo Latinoamericano de Justicia y Género (ELA), through the Observatorio de Sentencias Judiciales under its coordination, in which it was possible to identify a series of decisions handed down by Argentine courts that contain enunciative references to and that apply the standards established in the Convention of Belém do Pará. Several of these judgments are discussed in this section.

inter-American system for the protection of human rights, which entails an examination of the implications of the breach of their international commitments by the states in those cases in which the policies, legislation, and case-law are not effectively adapted to that set of provisions.

The Report of the Inter-American Commission on Human Rights on "The situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination" (OEA/Ser.L/V/II.117 - Doc. 1 rev. 1 – March 7, 2003 - paragraphs 165 to 168) also highlights the problem of domestic violence as a social problem, as it "exacts a terrible cost for the victims, their families and society as a whole, and has intergenerational effects."

- *Impact of Domestic Violence on the Victim and her Community: Second Investigative Judge for Family Matters of the Capital, Judgment No. 74, Tarija, May 20, 2009, Bolivia*[87].

59. In a trial on family violence, the complaining witness alleges that she was suffering physical and psychological aggression from her spouse, which worsened when he would consume alcohol. The family investigative judge sanctioned the respondent in this judgment. In her legal considerations the judge referred to the Convention of Belém do Pará to describe the problem of domestic violence and its impact not only on the victim, but also on her community:

"…violence has its physical and psychological manifestations and is an ill that harms society and the members of the family, rendering life together unsustainable. Violence can be conceptualized as the 'use of pressure and force by one of the intervening parties to overcome the will of the other.' Physical violence is considered to be constituted by injuries, bruises, contusions, scrapes and scratches, pushing, etc. Violence in its different aspects is considered a deplorable act in the Convention of Belém do Pará, which recognizes the right of every woman to respect for her physical, psychological, and moral integrity, and there is a special provision for protection from such acts, which should not remain in impunity."

- *Domestic Violence: Federal Supreme Court, March 24, 2011: Constitutionality of Article 41 of the Maria da Penha Law, Brazil.*

60. In that judgment, the Supreme Court sitting *en banc* unanimously upheld the constitutionality of Article 41 of Law 11,340/2006 (Maria da Penha Law)[88]; this Article prevents the assailants from enjoying benefits, such as suspension of the criminal proceeding, among others. In the judgment, the members of the Supreme Court affirmed that crimes against women that occur in the domestic sphere are extremely serious, have repercussions for the whole family, and for

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87 The State of Bolivia presented, along with its response to the questionnaire, examples of the case-law of the Constitutional Court on issues related to violence against women and forms of discrimination. See, for example, Constitutional Judgments 1152/2010-R, 1043/2010-R, 1076/2010-R, 1200/2010-R, 0771/2010-R, and 0530/2010-R, among others. The IACHR discusses one of these judgments in the next section, on different facets of women's labor rights. To round this out, in this section the IACHR presents excerpts of judgments revealed in its research that explicitly apply the Convention of Belém do Pará to punish the perpetrators of acts of violence against women, advancing important principles on preventing and punishing this serious human rights problem.
The IACHR also notes that the organizations CLADEM-La Paz and the Organización Nacional de Activistas por la Emancipación de la Mujer of Bolivia also presented information on judgments handed down by domestic courts related to violence and discrimination against women.

88 The IACHR's Rapporteurship on the Rights of Women celebrated the adoption by the State of Brazil, on August 7, 2006, of the Law 11,340, which includes a set of state actions aimed at preventing, investigating, and punishing domestic and family violence against women. The Rapporteurship recognized the adoption of this law, called the *Maria da Penha Law*, as a step of fundamental importance for the full implementation of the recommendations made to the Brazilian State in the IACHR's decision in the *Maria da Penha Maia Fernandes* case, and of the principles enshrined in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the "Convention of Belém do Pará." For more information, see IACHR, Press Release No. 30/06, *The IACHR Rapporteurship on the Rights of Women celebrates the adoption in Brazil of a specific law to prevent and eradicate domestic and family violence*, available at: <http://www.IACHR.oas.org/Comunicados/Spanish/2006/30.06esp.htm>.

that reason should be combated. These arguments were grounded in the objectives, text, and content of the Maria da Penha Law. Following are some excerpts of the votes:

Vote of Justice Marco Aurélio (Rapporteur):

"Article 7 of said law reveals what is understood as domestic or family violence against women: which is not only domestic violence, but also psychological, social, property and moral violence. The constitutional text was designed from this premise, with the goal of mitigating, as it is impossible to remedy as a whole what happens now in Brazil.

I have as a constitutional reference what is contained in Article 41 of the Law nº 11.340/2006, which in the end is consistent with the premise advanced by Ruy Barbosa highlighting that "the rule of equality consists in favoring unequally those that are unequal, according to their inequality....To treat those unequal as equal, or those unequal as equal, would be an alarming inequality, and not real equality." The focus advances the constitutional legal order, with the goal of achieving cultural progress, in the necessary combat of shameful statistics of the lack of appreciation of women as a basic cell of her family" [Translation from Executive Secretariat of the IACHR].

Vote of Justice Ellen Gracie:

"President, I join fully the brilliant vote of the eminent Rapporteur and I present my words to all colleagues that have already spoken. I have verified that this Tribunal understood perfectly the scope of the problem that the *Maria da Penha Law* seeks to resolve.

Domestic violence, President, and this was already stated by my colleagues very well, is not frequently reported. The cases that are known are scarce and the cases that reach tribunals are exceptions. Therefore, the problem is much larger in scope, more profound than the Brazilian society.

During the time when I was at the National Council of Justice – the Minister Gilmar Mendes remembers this – was during the adoption of the *Maria da Penha Law* – and in that exact moment there was a movement to convoke justice tribunals throughout the entire country to establish the special tribunals. It is very important, Mr. President, that there is not only a beautiful law, but also that this law also is effective, is applied, and it is implemented with the necessary conditions.

One standard for the application of the Maria Da Penha Law is that it should provide for a judge, a lawyer, a secretary, psychologists, and social assistants. It should also provide for shelters to assist these victims, there is a need for an infrastructure to relocate women in the labor market and to train them so they can exit economic dependence, which is many times the cause of their submissiveness.

(...) Mr. President, Ministers, it is key that the culture of domestic violence is decreased significantly. That the aggression of women – as in the present case – is not treated as something minor, as a less grave crime. This crime has larger repercussions that surpass the victim. It is reflected in all of her family, generates violence, engrains violence in the children that compose the family unit, and reproduces this violence in the future" [Translation from the Executive Secretariat of the IACHR].

- *Characteristics of Domestic Violence: RIT-F-Nº 192-2008, RUC-October 20, 2008, Family Court, Chile*[89].

61. This judgment is related to a complaint for domestic violence presented by A.C.F.A. against her partner A.R.A.A. The victim denounces her husband for domestic violence acts allegedly committed during their 37 year old marriage, which have rendered her family situation unsustainable. She alleges that her husband "is drunk, a circumstance which increases his aggressive nature, and despite having received treatments, these have yielded no results." The victim finally denounced these events after receiving a death threat from the perpetrator. She consequently requested a precautionary measure to order his immediate retreat from their common home, and to prohibit him from approaching her home and employment.

62. The Family Court condemned the accused of domestic violence of a psychological nature and granted the precautionary measure requested. In these considerations, the Family Court analyzes in detail the problem of domestic violence emphasizing its "chronic, periodic, and permanent nature over time", and establishing a link between psychological, physical, and sexual violence in such context:

> "**FIFTH:** That, in conformity with that established in Articles 8º N° 18 and 81º and the following in Law 19.968, this Family Court is competent to know the facts that have originated this cause, and according to that established in Article 5º in the Law 20.066, are acts that constitute domestic violence "all mistreatment that affects the life and the physical and psychological integrity of who has or has had the quality of partner of the aggressor, among others…..", sanctioned previously by Articles 8º and 9º of the mentioned law.
>
> On the other hand, the specialized psychological doctrine, has defined marital violence as "all those abuse situations that occur between a couple and whose manifestations appear in a clinical fashion and with an increasing intensity."
>
> According to the Inter-American Convention to Prevent and Eradicate Violence Against Women (Convention of Belém do Pará), violence against women is any action or conduct based on gender, that causes death, harm or physical or sexual or psychological suffering to a woman, either in the public or private sphere, taking place in the family, labor centers, schools, health institutions, in the street and in any other place.
> […]
>
> **SEVENTH:** That, in this sense, the proof put forward in a trial by the complainant, and such decreed by the Tribunal, allow us to reach the following conclusions:
> a) That the parties are unified by a marriage that has not been dissolved.
> b) That the complainant has been the victim of domestic violence of a psychological nature. Concerning this point, it is important to keep in mind that psychological violence is barely visible to others and in general it is only revealed when unfortunately there is only grave psychological or physical harm….
> c) That the complainant has also been the victim of sexual violence. It is noteworthy that sexual violence is one of the most critical forms of violence, it is a means to exercise power and an expression of the inequality of the sexes, which affects in more proportion women and girls. It is an attempt against dignity and the sexual liberty of persons, violating their sexual and reproductive rights through the use of force or the threat to use it, intimidation, coercion, blackmail, manipulation or any other mechanism that annuls or limits the personal will about sexuality or reproduction.

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[89] The State of Chile presented with its response to the questionnaire a selection of judgments from different Chilean Courts regarding gender equality, discrimination, and other related themes. In the present report, three of these judgments are discussed addressing the characteristics and the impact of domestic violence, and the application of aggravating circumstances for sexual violence crimes. The three judgments apply explicitly the Convention of Belém do Pará in their conclusions.

Sexual violence violates fundamental human rights such as the right to liberty and development of women, the right to decide freely when and how to have sexual relations, and the right to live free from violence.
These sexual rights guarantee women and men the possibility to make decisions with respect to their sexuality and to exercise it without pressure or violence. It is also related to the right to exercise sexuality in an independent way to reproduction. The right to physical and moral integrity is related to feel free of discrimination, pressure or violence in the sexual life and in sexual decisions, along with enjoying equality, mutual respect, and shared responsibilities in the exercise of sexuality.
d) Also, the complainant has been the victim of economic violence. For its part, it is understood from economic violence, "how the mode of violence in which victims are deprived or have restricted their money management; the administration of their own assets and/or gains; and by emotional violence a series of conduct such as insults, yells, permanent criticisms, disqualifications, humiliations, prolonged silences, etc.
[…]

e) All the elements previously described, constitute sufficient and clear elements to conclude that the complainant has been the victim of domestic violence episodes of a psychological nature throughout her marital life, with its chronic, periodic and permanent nature over time. It should be noted also the concept of an "escalade of violence", which refers to the process of the increase of intensity and duration of the aggression in each consecutive cycle, which means that the distance is shortened between each phase; phases that will repeat themselves as they are phases, following the same order."

- *Injuries and Domestic Violence: Single Criminal District Court for Criminal Matters of Puerto Cabezas, North Atlantic Autonomous Region, March 12, 2004, Nicaragua.*

63. In this judgment, the accused, J.U.E., was convicted of the offense of personal injuries (*lesiones*) to the detriment of C.I.E. On March 9, 2003, at approximately 8 p.m., the accused began to attack his wife with sticks and punches, injuring her all about the body; this abuse was repeated constantly until March 24, 2004. In finding him guilty of the crime of personal injuries, the Court made reference to the provisions of the Convention of Belém do Pará and to the problem of domestic violence:

"For this Court it is important to highlight what is contemplated in Article 143 of the Criminal Code in force, which provides that it is proven that the injuries are a consequence of violence among members of the family; the maximum penalty shall be imposed, and in the instant case it is shown that the injuries were provoked by the victim's spouse, and precisely to protect the woman from discriminatory acts such as these the states sign conventions, which constitute an international legal instrument that commits the states, with binding force, to take certain actions in favor of women's rights, among these we have the Convention to Eliminate all Forms of Discrimination against Women (CEDAW)….."

"… Moreover, there is an impairment of rights enshrined in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, violence which Article 1 of the above-mentioned Convention defines as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere,' and it should be understood as physical, sexual, and psychological violence (Article 2), and that women have the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments…."

- *Physical and Psychological Integrity: Criminal Chamber of the Court of Appeals of the Judicial Department of San Cristóbal, Judgment of October 13, 2009, Dominican Republic.*

64. The injured party filed a complaint against the accused for acts of verbal and psychological violence, accusing her of having relations with another person. Those acts resulted in the victim suffering a severe depression and subsequently being hospitalized. This judgment addresses an appeal filed on behalf of the accused against the guilty verdict. The Criminal Chamber of the Court of Appeals for the Judicial Department of San Cristóbal decided that the judgment appealed would be affirmed based on considerations grounded in international human rights law, including the Convention of Belém do Pará and women's right to protection of their physical and psychological integrity:

> "CONSIDERING, that not only is the physical integrity of women, by reason of their gender, a legally protected interest, but that women's psychological integrity is equally protected, i.e. that any act, conduct, or pattern of conduct that causes psychological harm is an infraction; and gender or family violence is the principal object of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 'Convention of Belém do Pará' of June 9, 1994, promulgated by the Executive Branch on November 16, 1994; instituting as a human right of women the right to be free from violence, in both the public and private spheres (Article 3 of this Convention).
>
> CONSIDERING, that for the purposes of the Convention of Belém do Pará, violence against women should be understood as any act or conduct based on their gender that causes death or physical, sexual, or psychological harm or suffering, in both the public and private spheres (Article 1); and it shall be understood that violence against women includes physical, sexual, and psychological violence: (a) that takes place within the family or domestic unit, or in any interpersonal relationship, whether the aggressor shares or has shared the same domicile with the woman, and that it includes, among others, violence, mistreatment, and sexual abuse.
>
> CONSIDERING, that every woman has the right to recognition, enjoyment, exercise, and protection of all the rights and freedoms enshrined by the regional and international human rights instruments. These rights include, among others: b. the right to have her physical, mental and moral integrity respected (Art. 4(b) of the Convention of Belém do Pará).
>
> CONSIDERING, that the Dominican Republic, as a State Party to the Convention of Belém do Pará, condemns all forms of violence against women and agrees to adopt, by all appropriate means, and without political delays, measures aimed at preventing, punishing, and eradicating such violence, and to carry out the following: b. to act with due diligence to prevent, investigate, and punish violence against women."
>
> CONSIDERING, that an analysis of the judgment appealed reveals that by legal means of evidence and in keeping with the principle of freedom of evidence (Article 170 of the Code of Criminal Procedure), produced and weighed by the court below, the elements constitutive of the wrongful acts of gender and family violence were established, to the detriment of the young woman Y.J.E.M., as are: the material or objective element: the psychological or moral harm resulting from the conduct of the accused, on repudiating her based on her having deceived him in her condition of having had prior sexual relations, and it having been established by the scientific documentary proof that it is a willful act by the accused (action within the definition of the crime); moral and intentional element having acted consciously and voluntarily in order to cause harm and violate a legally protected right, as is the psychological integrity of the woman who is the victim, which is an unlawful act; and legal element: provided for and sanctioned at Articles 309-1 and 2 of the Dominican Criminal Code transcribed above."

- *Measures of Protection from Imminent Acts of Violence: Family Court of Appeals of the Second Division of Montevideo, Judgment No. 18/2009, Uruguay*[90].

65. The judgment challenged ordered that the respondent leave the home and the plaintiff return. The original judgment was handed down in the context of urgency provided for in Article 5 of Law No. 17,514 on domestic violence. In this case, the respondent changed the lock at the property that his partner was occupying with their son, making it impossible for them to enter the home, due to a domestic violence situation. The Court of Appeals affirmed the judgment, establishing that:

> "(8) The Chamber has affirmed in Judgment 110/08, among other things: 'One must inquire whether the measures of protection of the alleged victim adopted pursuant to the general principles of Law No. 17,514, which renders positive the obligations of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women approved in Belém do Pará (Law No. 16,735).'
>
> Those provisions impose an interpretation of the law in application of the pro-victim benefit, which indicates that one must act so as to prevent situations of violence and, even in case of doubt, one should opt for the solution that best protects the rights of those who appear to be presently or potentially subject to aggression.
>
> The system of judicial protection acts taking into account, moreover, the criterion of risk prevention, which imposes an analysis of the facts alleged that is based on the evaluation of risks that derive from the situation under study for the situation of the victims' rights."

- *Impact of Domestic Violence: RIT-F 980-2010, RUC 10-2-0361810-2, Family Court, November 25, 2010, Chile.*

66. This judgment relates to a complaint presented by the victim against her husband, which whom she has been married for 28 years. The victim alleges that "the accused is always jealous of her, surveys and controls her, despite him being living together with a new partner. He highlights that alcoholism problems lead the accused to insult her constantly and to express his jealousy, which does not allow her to live in peace and is affected emotionally."

67. The Family Court condemned the aggressor for domestic violence presenting considerations in its resolution over the impact of domestic violence in the victim and her family:

> "**FOURTH:** That Law 20.066 has defined domestic violence as all mistreatment that affects the life and the physical or psychological integrity of a married person. Mistreatment in this context can be understood as any relationship of abuse that happens between family members, understanding as "relationship of abuse" such conduct that by action or inaction produces physical, psychological or sexual harm to another person.
>
> That the "Inter-American Convention to Prevent, Sanction, and Eradicate Violence against Women", defines violence against women as any action or conduct, based on their gender, which causes death, harm or physical, sexual or psychological suffering to a woman, either in the public or private sphere.

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[90] The State of Uruguay attached to its response to the questionnaire "some of the many judicial decisions issued by courts at the national level related to gender equality and the principle of non-discrimination, applying decisions and recommendations of the inter-American human rights system." The State also sent decisions related to violence against women, their economic, social, and cultural rights, their reproductive rights, and their right to be free from all forms of discrimination. This section discusses judgment 18/2009 related to the problem of domestic violence and in the next section one related to discrimination against women, both directly applying inter-American case-law on human rights in their conclusions.

FIFTH: That the accused has incurred in such acts, especially psychological violence, having described the same daughters of the parties situations of violence suffered by her and her mother, on the part of the accused, which now does not live in the common home, and equally assumed a situation of control and power over the victim.

Based on these considerations and in conformity with Articles 81 and the following of the law 19.968, law 20.066 about domestic violence, law 14.908, the Inter-American Convention on the Prevention, Sanction and Eradicate Violence against Women and the Convention to Eliminate all Forms of Discrimination against Women, in addition to the favorable opinion of the technical counselor of the Tribunal, it is declared that:

I.-That G.S.B.N. is condemned, Run 8.553.233-2, as author of the mistreatment of domestic violence in the victim A.E.M.O., to pay a penalty to the Regional Government of Los Rios.

II.-That it is applied, as an accessory measure, the following:
The prohibition of the offender Mr. G.S.B.N., Run 8.553.233-2, to approach the complainant in any place where she is located, especially in her home and place of employment. This measure will last for a year, being renewable at the request of the complainant."

The Link between Discrimination and Violence

- *Discrimination, Sexual Abuse, and Access to Justice: Ortega, René Vicente re: motion for cassation, Federal Court of Appeals for Criminal Cassation, Chamber II (December 7, 2010), Argentina.*

68. This judgment, decided upon by the Second Chamber of the Federal Court of Appeals for Criminal Cassation, addresses facts related to Ms. C.L.S., who was getting off a train at the "11 de septiembre" station. In the context of the facts, "the accused approached her and fondled her breasts through her clothes." C.L.S. reported the incident to the police personnel, whose members proceeded to detain the assailant. Criminal charges were brought in relation to the case in which the official public defender's office sought suspension of the evidentiary period, and the prosecutor in the case accepted that request. In the court of first instance that motion was not accepted. The defense, in response, filed a motion for cassation. The Federal Court of Appeals for Criminal Cassation affirmed the decision of the court of first instance. In that judgment the judges, applying Article 7 of the Convention of Belém do Pará, established a link between the problem of discrimination, forms of sexual abuse, and access to justice, noting:

"Nonetheless, the prosecutorial pronouncement is subject to the basic review for legality that is part of the jurisdiction over acts that unfold in the cases before the courts ... the suspension of the evidentiary period presupposes the limitation on the criminal prosecution headed up by the Office of the Attorney General (Ministerio Público Fiscal) ... while it is true that the case under study has prosecutorial consent, it is also true that the events here alleged constituted acts of violence especially directed against women.

In that regard one should recall that according to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Convention of Belém do Pará, that violence finds expression through ... any act or conduct, based on one's gender, that causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere (Article 1).... Insofar as the suspension of the evidentiary period impedes the effective elucidation or prosecution of facts that constitute a crime – impunity – that rule should be considered in relation to the obligations assumed with respect to the concrete criminal justice response in the face of events such as those that constitute the object of prosecutorial charges….

In that understanding, as the Argentine Republic adopted that Convention through Law 24,632, the prosecutorial consent for the suspension of the evidentiary period must be weighed by the judicial entity in relation to the obligations to prevent, investigate, and punish acts such as those considered here, for these aspects go to the commitment assumed by the State on adopting it. In that context, the prosecutorial opinion favorable to the suspension of the evidentiary period is manifestly at odds with the obligations assumed by the Argentine State. Accordingly, there is a formal legal obstacle that impedes the Public Ministry from ordering the criminal prosecution … the legality of the consent given by the Public Ministry must be considered vis-à-vis the demands of the Convention of Belém do Pará, which transcend the references to the way in which the supposed sanction to be imposed could be carried out, economic reparation and community tasks offered by Ortega, characterizing the incident as a triviality or commonplace. In consideration of all the foregoing, the legal impediment referred to above undercuts any efficacy of the prosecutorial consent and legitimates the court's denial."

The Duty to Act with Due Diligence

- *Due Diligence: Case No. 13,240 – "Calle Aliaga, Marcelo re: Motion for cassation" – Second Court of Appeals, Chamber for Criminal Cassation – November 30, 2010, Argentina.*

69. This judgment, issued by the Second Court of Appeals of the Chamber for Criminal Cassation, concerns a case in which Mr. M.C.A. presumably engaged in physical abuse of his partner and their daughter. He himself requested suspension of the evidentiary period. The court did not grant his motion, and therefore the resolution was appealed. The Court of Appeals affirmed the ruling and put forth legal considerations related to the duty to act with due diligence required for investigating and punishing violence against women under the Convention of Belém do Pará:

"... It should be noted that this is a case in which the suspension of the evidentiary period would constitute a breach of the duties of the State assumed through the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), by whose Article 7 the states "condemn all forms of violence against women" and have undertaken to "agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: ... b. apply due diligence to prevent, investigate and impose penalties for violence against women.... f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures."

Without prejudice to noting that Ms. I.V.T. has described a situation of violence that goes beyond the facts included in the accusations that the prosecutorial authorities have made against M.C.A. (see pages 34/36 of the record), those included in the charges constitute in themselves acts of violence against women in which one should not make distinctions of seriousness mindful of the first part of Article 7 of the Convention of Belém do Pará, which condemns all forms of violence against women. The suspension of the evidentiary period is irreconcilable with the duty of the state to investigate, clarify the acts of violence against the woman, and punish those responsible in a trial with due guarantees...."

Access to justice

- *Knowledge of Rights by Women: Case No. 151462/16,115, "Prosecutor v. C E for Coercion," San Rafael, Mendoza, August 14, 2009, Argentina.*

70. In this judgment, a man accused of violent acts committed against several women requested suspension of the evidentiary period for the third time. The judge rejected the request, presenting considerations related to the lack of knowledge, among women victims, of their rights and how to uphold them, as a basic right for being able to access justice, and the duties of judicial officers to act without delay in the face of the problem of violence against women:

> "... in none of the three cases described were the women who were said to have been victims of violence informed of the rights and powers they had and that they could exercise in each of the criminal proceedings they initiated; with the consequent detriment this has for the exercise of that right key for exercising other rights which is access to justice. In addition to this disinformation is the lack of protection that results from that manner of proceeding, for neither were given notice of their rights to physical and moral protection, and protection of the family, to which they could have had access had they known it…. I do not share the investigative and evidentiary criterion followed by the prosecutor: that the complaining witness would not have turned to the police physician (presumably due to feeling terrorized by her aggressor, feeling unprotected, not believing in the judicial mechanisms, etc.), it was not a valid reason for not accusing the husband of the lesions he is said to have caused her…. I understand that the investigative and evidentiary criterion adopted here by the prosecutor is not compatible with the duties set forth in the Convention of Belém do Pará to consistently protect the human rights of women who may have been victims of violence.
>
> Finally, allow me to recall that as officials of the Judicial branch, we are reached by the duties established in the "Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women" or "Convention of Belém do Pará," which was adopted by the General Assembly of the Organization of American States on July 9, 1994, ratified by our country on July 5, 1996, and which became federal Law No. 24,632.... That international document affirms that violence against women constitutes a violation of human rights and of their fundamental freedoms. Consistent with this premise, its aim is to prevent, punish, and eradicate all forms of violence against women. Accordingly its provisions, in cases in which issues such as those considered here are at play, should be applied with the corresponding adaptations."

The nature, definition, and scope of sexual violence

- *Sentencing for Rape Crimes: Supreme Court of Judicature, Malcolm Othneil Mayers v. R Court of Appeal, Criminal Appeal No. 22 of 2005, Barbados.*

71. This judgment from the Court of Appeals of Barbados relates to the appellant, Malcolm Othneil Mayers, who was convicted of rape on April 25, 2005. The complainant was 18 years old when she was raped by the appellant, who was 44 years old. On June 9, 2005, he was sentenced to eight years imprisonment. The appeal before the Court raises the issue of violence as a component of rape and the appropriate sentence - especially its length - given the circumstances. The Court dismisses the appeal and the sentence of 8 years' imprisonment is confirmed.

72. The Court, in its analysis of the nature, gravity, and components of rape, particularly its physical and psychological harm on the victim, references significantly international precedent related to this issue, including the Convention of Belém do Pará:

> "Support for the proposition that rape constitutes a crime of violence is also to be found in international instruments dealing with violence against women to which Barbados has subscribed. Article 2 of the United Nations Declaration on the Elimination of Violence against Women, 1993, which was the text of a General Assembly Resolution adopted by consensus on 20 December 1993 provides that:
>
> "Violence against women shall be understood to encompass, but not be limited to, the following:
>
> (a) …
>
> (b) Physical, sexual and psychological violence occurring within the general community, including rape...
>
> (c …"
>
> Article 2 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994, which was ratified by Barbados on 16 May 1995 and entered into force on 15 June 1995 provides that:
>
> "Violence against women shall be understood to include physical, sexual and psychological violence:
>
> (a) …
>
> (b) That occurs in the community and is perpetrated by any person, including among others, rape.
>
> (c) …"
>
> It follows from the above that rape is defined in terms of constituting violence against women".

- *Elements of the Crime of Rape: Trial Court No. 1 of the Capital, Judicial District of Cochabamba, Case No. 301199200710438, Bolivia.*

73. This indictment for the crime of rape was handed down in the criminal proceeding by the Public Ministry and by private accusation in the Judicial District of Cochabamba. In the case that is the subject of this ruling, the alleged victim, along with her colleagues, bought a drink prepared in a liquor store to consume in public. It is argued that as soon as the victim drank the beverage she didn't remember anything more about the facts. The next day she had physical symptoms of rape. The court referred to the Convention of Belém do Pará to give content to Law 2033 to protect victims of crimes against sexual freedom, and to describe the elements of power inherent in a rape:

> "That the development of the criminal justice doctrine in crimes that attack sexual freedom, as part of violence against women, has been incorporated into Bolivian legislation in Law 1599 of October 18, 1994, which ratifies the "Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women," known as the Convention of Belém do Pará, Brazil, as well as Law 2033 or "Law for the Protection of Victims of Crimes against Sexual Liberty" of October 29, 1999, which consider, respectively, that violence against women constitutes a violation of human rights and fundamental freedoms, and that they limit

women fully or partially in the recognition, enjoyment, and exercise of their rights and freedoms. Violence against women is understood as any act or conduct based on their gender that causes women death or physical, sexual, or psychological harm or suffering whether in the public or private sphere. Physical, sexual, and psychological violence are considered violence against women. The purpose of Law 2033 is to protect the life, physical and psychological integrity, security and the sexual freedom of every human being.

… Criminal investigations and the evolution of contemporary criminal justice doctrine related to sexual violence against women are guided by these precepts, on noting that it is crucial to understand the role of rape as an instrument of power for subduing women, subjecting them in a highly vulnerable position to another great variety of expressions of abuse and violence.

The criminal justice doctrine in crimes against sexual freedom, as part of violence against women, has been reflected in Bolivian legislation in Law 1599 of October 18, 1994, which ratifies the Convention of Belém do Pará, and in Law 2033 or 'Law for the Protection of Victims of Crimes against Sexual Freedom' of October 29, 1999, which consider, respectively, that violence against women constitutes a violation of human rights and fundamental freedoms, and that they limit women fully or partially in the recognition, enjoyment, and exercise of their rights and freedoms. Violence against women is understood as any act or conduct based on her gender that causes women death or physical, sexual, or psychological harm or suffering whether in the public or private sphere. Physical, sexual, and psychological violence are considered violence against women. The purpose of Law 2033 is to protect life, physical and psychological integrity, security and the sexual freedom of every human being."

- *Evidence in Cases of Sexual Violence: Tutela Judgment T-453 of 2005, Colombia*[91].

74. This judgment addresses a *tutela* action brought by the representative of the victim (hereinafter "the moving party") on August 6, 2004 against the Seventh Criminal Court of the Circuit of Bucaramanga, considering that said office engaged in unlawful conduct ("*en una vía de hecho*") on violating Article 235 of the Code of Criminal Procedure, on decreeing and collecting several items of evidence requested by the Office of the Attorney General and by the defense of the accused that were "openly junk leads and constituted attacks on her rights as victim of the offense of carnal access with a person unable to resist [*acceso carnal con persona puesta en incapacidad de resistir*]." It was held that the evidence called into question should have been rejected by the judge, as it was geared to investigating her conduct and not to clarifying the facts and the responsibility of the accused, violating her fundamental and constitutional rights to due process, equality, privacy, and human dignity. The moving party requested that it be ordered that the taking of the questioned evidence not continue and that no probative value should be attributed to such evidence as was already collected.

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[91] The State of Colombia responded to the questionnaire by identifying a series of judgments issued by several organs of the judicial branch in which reference is made to the standards, decisions, and recommendations of the inter-American human rights system, judgments that "describe women as meriting special protection." The State, in particular, highlights judgments handed down by the Constitutional Court that "have taken as their basis the standards, decisions, and recommendations of the inter-American human rights system" and decisions of the Chamber of Criminal Cassation of the Supreme Court of Justice that have invoked these standards. The State also makes reference to four decisions of the Council of State (Consejo de Estado) "on gender perspective" related to issues of electoral annulment and direct reparation.
Based on the information provided by the State, the IACHR analyzes four paradigmatic judgments in this section. First, it analyzes the judgments of Tutela T-453 (2005), T-025 (2004), and Order 092 (2008) of the Constitutional Court in which express reference is made to the standards of the inter-American system in the discussion of key issues for the protection of women's rights such as evidence in cases of sexual violence and the particularly serious situation of displaced women. The IACHR also analyzes the judgment in case No. 23508, handed down by the Supreme Court of Justice, in which, according to the State, "the Court undertakes a careful review of domestic and international instruments and laws favorable to women [as well as] an analysis of how the criminal procedure has to be approached in sexual offenses by judicial officers who work with the provision and studies the scope of the element of violence in the line of case-law that the Court has maintained in that respect." In the next section, the Commission discusses judgment C-355/2006, which liberalized the practice of abortion in Colombia.

75. The Constitutional Court ruled in favor of the moving party, overturning the judgments of first instance, granting the special protection (*tutela*) of the rights to due process and privacy. In addition, it ordered said vitiated evidence from the criminal proceeding be excluded, and instructed that the competent judicial officers be put on notice to refrain from collecting evidence that "unreasonably or disproportionately invades the right to privacy" or that "has as its purpose to show that from the women's prior or subsequent private life one infers that she gave her consent to a completely different sexual act than the one that was the subject of the complaint."

76. Of this decision, the Commission highlights the mention made by the Constitutional Court of the provisions of the Convention of Belém do Pará, as well as the decisions of the Inter-American Court in light of the analysis done by that Court with respect to "the rights of the victims of sexual crimes in international law, comparative law, and domestic law." According to what was indicated by the organization *Corporación Sisma Mujer* in its response to the questionnaire, this decision "grants protection to a woman victim of rape, so that evidence ordered and collected that was aimed at investigating the conduct of the victim, and not at clarifying the facts, not be taken into account in the proceeding. Notwithstanding this judgment, in addition to incorporating into Colombian domestic legislation the rules of procedure and evidence of the Rome Statute in relation to sexual violence, judges and prosecutors continue requesting, decreeing, and collecting this type of evidence."

77. In this sense, the Constitutional Court ruled in the following terms:

> "Beginning in the 1980s, and taking as the basis international instruments that enshrine, among others, the rights to physical, psychological, and moral integrity, to dignity, to honor and privacy, as well as access to justice, in the context of the Americas and in Europe and the United Nations, principles, guidelines, and orientations have been issued to harmonize the fundamental rights of persons investigated and indicted with due process and the right to defense, with victims' rights in the criminal proceeding. Some of these guidelines, which emphasize respect for the dignity of victims, have placed special attention on the protection and guarantee of the rights of victims of sexual crimes, in the understanding that this type of conduct seriously affects the physical and psychological integrity of persons, as well as their dignity as human beings, which may be seriously affected if the criminal proceeding is allowed to lead to a new victimization.
> …
> In effect, some international instruments to which Colombia is a party have addressed the issue of protection of the victims of sexual violence within the criminal proceeding, and have recognized the obligation of the authorities to accord victims dignified and respectful treatment, and to adopt measures that reduce the risks of the double victimization that may occur in the taking of evidence or other judicial measures, or in the handling of information on the facts of the proceeding and the victims' identity.
>
> …
> For its part, the "Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women" established the following duties of the states:
> Article 7. The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: …
> (b) Apply due diligence to prevent, investigate and impose penalties for violence against women;
>
> …
> (d) Adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

(e) Take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
(f) Establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; … (emphasis added)."

78. Mindful of the foregoing, the Constitutional Court also referred to decisions of the IACHR in cases related to victims of sex offenses. In this respect, the Court noted:

"Some of these recommendations on protection of the privacy and dignity of the victims of sex offenses have been applied by the Inter-American Commission on Human Rights and by the European Court of Human Rights. For example, in Case No. 12,350 against Bolivia, the Commission protected the privacy of the victim and petitioner by using a fictitious name, mindful of the nature of the violations and their possible negative impact on the private life of the victim. Another example is in Case No. 11,565 against Mexico, in which the Commission declared the case admissible even though there were still domestic remedies. In that case, the Commission considered that it was not possible to exhaust the domestic mechanisms for protection of the victims due to the fact that the prosecutor competent to take cognizance of the case was the same one before whom the victims have refused to allow an additional gynecological exam, considering it to be a form of psychological torture."

- *Sexual Violence and International Human Rights Instruments: Proceeding No. 23508 – Special Appeal in Criminal Cassation. Chamber of Criminal Cassation, Supreme Court of Justice – September 23, 2009, Colombia.*

79. This decision by the Chamber of Criminal Cassation of the Supreme Court of Justice – presented by the State in its response to the questionnaire – addresses a criminal proceeding that was brought as the result of a report filed by S.P.L.D, 23 years of age, against Mr. N.A.O.C, for the events of January 8, 2002, in which the accused "rushed at the victim with the pickup truck that he [usually] drives, harmed her with that vehicle in the knee, intimidated her with a firearm, and took her to his apartment … where he beat her several times, all while insulting and threatening her, to force her to have oral sex, and to penetrate her anally."[92]

80. In the decision the special appeal in criminal cassation filed by Mr. N.A.O.C was resolved; he was accused of the offense of violent carnal access, against a judgment on appeal which, having overturned the judgment of absolution of the criminal court of first instance, imposed on the accused the principal penalty of 100 months in prison "as the perpetrator responsible for the punishable conduct of violent carnal access."

81. As indicated in that decision, the judgment of first instance had established that the victim had the "intent to harm the defendant, as there had been a sentimental relationship between the two which, though stormy and difficult, was as consensual as it was stable over time, accordingly it was not possible to be certain that the sexual act that took place on January 8, 2002 had been contrary to her will." Nonetheless, the judgment handed down by the Superior Court of the Judicial District of Bogotá overturned that decision indicating, among other things, that "the court below could not question the complaining witness's credibility just because she and the defendant had sexual relations for more than eight years, for without prejudice to the

[92] In her complaint, Ms. S.P.L.D had also indicated that "at the age of 14 or 16 years, she met the assailant when she was a student of the educational institution referred to and that, since then, he [had] stalked, followed, abused, photographed, and exploited her economically, forced her to abort, and accessed her initially in a violent manner and later with consent (in that she abided by all his demands in the hope that he would leave her in peace), without the fear and anxiety that would have enabled her to lodge a criminal complaint against him, not to mention to cease appearing vis-à-vis all others that they maintained a sentimental relationship."

nature or modality of those relations, both agreed to say that it was not a formal engagement, and there are even documents that show the existence of scandals, threats, assaults, and offenses of which the woman was victim."

82. Mindful of the foregoing, the Chamber for Criminal Cassation heard the motion filed by the accused indicating that the "legal problem" proposed was focused mainly on establishing whether it was possible "to exclude the normative ingredient of violence in the legal definition of the crime of violent carnal access." In this regard, the Chamber proceeded to analyze the matter raised by determining, among other aspects, how sexual offenses need to be approached in the criminal process by judicial officers in keeping with the standards set in the international instruments and domestic law provisions that allude to protection of the fundamental rights of women.

83. In this respect, the Commission observes that the judgment includes a chapter aimed at studying the "protection of the fundamental rights of women and sex offenses" in which reference is made to certain relevant standards of the inter-American human rights system, specifically some provisions contained in the Convention of Belém do Pará. In this regard, the Commission highlights the following excerpts of that decision:

> "Similarly, the *American Convention on Human Rights* of November 22, 1969 (or *Pact of San José, Costa Rica*), approved in our country by Law 16 of 1972, indicated that the States party should undertake "*to respect the rights and freedoms recognized herein and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of ... sex,*" and that all human beings "*are entitled, without discrimination, to equal protection of the law.*"
>
> Moreover, the *Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women* (or *Convention of Belém do Pará* – Brazil), signed June 9, 1994 and approved in our country by Law 248 of 1995, affirmed that "*violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men.*"
>
> It also noted that "*violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.*"
>
> It also indicated: "*Violence against women shall be understood to include physical, sexual and psychological violence:*"
>
> "(*a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse.*
> "(*b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place.*"
>
> In a similar vein, it emphasized: "*The right of every woman to be free from violence includes, among others,*"
> "(*a) The right of women to be free from all forms of discrimination; and*
> "(*b) The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.*"
>
> It also introduced the obligation of the states that signed the Convention "*to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to*:"

"(*a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;*
"(*b) apply due diligence to prevent, investigate and impose penalties for violence against women;*
"(*c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary.*
"… (*e) take all appropriate measures … to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;*

"(*f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures.*"

In addition, it provided for the duty to "*undertake progressively specific measures, including programs:*"
"(*b) to modify social and cultural patterns of conduct of men and women … to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women.*"

Finally, it clarified that for the adoption of all those measures, the states parties
"*… shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.*"

It should be noted that this *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* was informed, among others, by the *Declaration on the Elimination of Violence against Women*, adopted by the UN General Assembly on December 20, 1993, which alluded, among others, to the obligation to
"*… ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions.*"

84. In addition to the foregoing, the Criminal Chamber also noted:

In the domestic legal order, the Constitution provides that "*Colombia is a state under the rule of law [Estado social de derecho], organized in the form of a Republic, … founded on respect for human dignity*" which "*recognizes, without any discrimination, the primacy of the inalienable rights of the person*" and in which all "*shall receive the same protection and treatment from the authorities and shall enjoy the same rights, freedoms, and opportunities without any discrimination on grounds of sex,"* to which end "*it shall protect especially those persons who because of their economic, physical, or mental condition is in circumstances of manifest weakness and shall punish abuse or mistreatment committed against them."*

In addition, it provided unequivocally: "*women and men have equal rights and opportunities*" and that women "*may not be subject to any kind of discrimination.*"

85. Mindful of the normative framework indicated, the Chamber noted as follows:

"In keeping with the normative framework outlined above, it is apparent that sex offenses in general, and in particular the specific sex offense of *acceso carnal violento* (violent carnal access) provided for at Article 205 of Law 599 of 2000 (which, consistent with the provision

of Article 212 id., provides for a punitive sanction for any person who, by means of violence, penetrates another person vaginally, anally, or orally with the virile member, or any other part of the body, or even an object), it not only seeks to prevent, punish, and eradicate specific forms of conduct of which women are generally victims, but at the same time should be interpreted by all those who work with the provision, including defense counsel, so as not to incorporate any discrimination against them, whether due to customs, practices, and interventions which in appearance are lawful, or by any other kind of expression that directly or indirectly contains prejudices, stereotypes, or patterns of conduct aimed at exalting, suggesting, or proposing the superiority of one sex over the other.

This need to bring the practices of legal professionals into line with the domestic and international standards on the protection of women does not restrict the right of the respondent or defendant to effective representation, much less his freedom to be assisted by counsel and to choose his defense strategy as he sees fit, for while it is true that he is obligated to be partial (i.e. to act exclusively in the interest of his client), it is also true that he performs a function of public interest in the proceeding, which entails guaranteeing, within the framework of a state with democratic government and rule of law, absolute respect for the fundamental guarantees, principally of the client, but at the same time of all involved in the action.

Therefore, no procedural act of the attorney in interpreting the scope of the criminal definition of *acceso carnal violento* and of the other sex offenses may explicitly or implicitly contain any argument, assessment, or position that constitutes an attack on the right of women to dignity and freedom from violence, segregation, or recidivism, in the role of victim, nor derive any benefit whatsoever for the respondent arising from a specific situation of vulnerability.

It is also apparent that the provisions that make up the "block" addressed by Article 93 of the Constitution include *acceso carnal violento*, or rape, as one of the most serious expressions of sex crimes committed against women, especially when it occurs in the home or involves persons with whom the victim has interpersonal or family relations.

In that regard, the report of the Commission on Human Rights referred to above (*supra* 2.3) notes that:

"… *Sexual violence in Colombia is a matter of special concern. In 1995, the Institute of Legal Medicine of Colombia investigated 11,970 sexual crimes nationwide. Eighty eight per cent of the victims were women. It is estimated that an average of 775 rapes of adolescents occur annually, and that the incidence of rape among the 15-49 age group is 3.5 per 1,000 women. It is estimated, however, that only 17 per cent of the victims denounce such acts of sexual violence. An estimated 47 per cent of all acts of sexual violence against women over 20 years of age are committed by relatives.*"

At the same time, the Constitutional Court, in the ruling that found Law 248 of 1995 (approving the *Convention of Belém do Pará*) constitutional, stated:

"… *women are also subjected to a more silent and hidden violence, but which is no less serious: assaults in the home and in couples, which are not only prohibited forms of discrimination based on sex …, but may come to be of such intensity and generate such pain and suffering that they constitute real torture, or at least cruel treatment prohibited by the Constitution…. Accordingly, one cannot invoke the privacy and inviolability of the home to justify attacks on women in private and domestic relationships. Moreover, this violence may be even more serious than that brought to bear openly, for its occurrence in these intimate settings renders it a silent, tolerated, and even at times tacitly legitimated phenomenon.*"

Hence, for the case-law in the jurisdiction reviewing *tutela* remedies of that Court, the victims of sex offenses in criminal proceedings

"… *have a constitutional right to have their right to privacy protected against the taking of evidence that may imply an unreasonable, unnecessary, and disproportionate intrusion into her private life, as occurs, in principle, when one inquires generically into the sexual or social behavior of the victim prior or subsequent to the facts being investigated. That circumstance makes the evidence requested or collected into constitutionally inadmissible evidence, in response to which both the Constitution and the legislator order its exclusion.*"

86. Clearly the Chamber, after making the corresponding analysis, decided "NOT TO OVERTURN" ("NO CASAR") the judgment appealed by the accused, with which the decision of the Superior Court of the Judicial District of Bogotá became firm.

- *Attempted Sexual Abuse: Decision of the Trial Court of La Unión of December 22, 2008, El Salvador*

87. In this decision, the offense was attributed to a 66-year-old man for having attempted to sexually abuse his nine-year-old niece. According to what is indicated in the judgment, at moments when the accused tried to abuse the minor child, her father entered the room, whereupon the accused was said to have quickly left, which is why the offense has been analyzed as an attempted offense ("*en grado de tentativa*"). To lay a foundation for its decision, the corresponding Court proceeded to undertake an analysis of the legal characterization of the facts related to the offense of "*violación en menor o incapaz en grado de tentativa*" ("attempted rape of a minor or incompetent"). In this respect, the Court stated as follows:

"With respect to the offense attributed to the accused … the Court understands that the legislator established for this type of offense a generic chapter called "ON RAPE AND OTHER SEXUAL ASSAULTS" under Title four called "OFFENSES AGAINST SEXUAL FREEDOM" of the Second Book of the Criminal Code; from which it stems that the legal interest protected is the sexual freedom of persons, understood as the intrinsic faculty of the human person to elect to engage or not engage in sexual acts that stimulate the functions of the genital organs; specifically, in the instant case, the sexual freedom of a women who shows unequivocal signs of mental alienation and very specifically her intangibility or dignity, that is the right of the woman to be without or free from any sexual harm; she has suffered physical and psychological harm; a prejudice protected in our Constitution of the Republic at Article 2(1); and in the international legal orders in place and ratified in our country, such as: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which at Articles 1, 2, and 3 essentially establish: "That women given their condition should be excluded from all physical, moral, and psychological violence, emphasizing moreover that every woman has the right to be free from violence, in both the public and private spheres." In addition, the Convention of Belém do Pará, which at its Article 3 states: "Every woman has the right to be free from violence," said violence being defined at Article 1 of the same convention as: "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." Prior to getting into an analysis of the evidence, this Court, mindful of the authority granted to it in Article 344 of the Code of Criminal Procedure, should characterize the act by reference to the criminal law definition that best fits the action committed."[93]

[93] Mindful of the considerations made by the Court on the legal characterization of this offense, it determined that in the case it did meet the requirements of the criminal definition in question, to wit: "(A) Contents with objective sexual content…. (B) that the minor victim is under 15 years of age…. (C) For having been perpetrated against a minor, or because of her minority of age she has been exposed in a circumstance that she has not been able to avoid it, the accused making use of it to commit the offense…. (D) The act not having been consummated due to circumstances beyond the control of the accused."

88. In addition, the Court made the following considerations in relation to the testimony given by the child who was the victim of the sexual assault:

> "… it has become quite common in bringing criminal actions for us to encounter minors in two fundamental conditions, as victim or as witness to the offense. The minor (girl) is not just any victim, but an especially vulnerable victim, facing not only the consequences of the offense for the child and her environment, but also the fact that she must participate in all the phases of the investigation and trial, with the negative elements this may entail. Along with the immediate effects of the offense, her psychosocial development may be at risk and her personal capacities to adapt in the long term may be affected. These effects are increased if we consider the nature of the offenses in which they are implicated as victims or witnesses."

89. Finally, the Court found the perpetrator responsible for the crime of rape to the detriment of the minor and decreed a sentence of seven years in prison.

- *Rape of a Girl: Motion for cassation on the merits filed by Mr. C.E.C.G. against judgment on appeal No. 82 of September 10, 2007, handed down by the Second Superior Court of Justice in the trial of E.R.G., July 5, 2010, Panama*[94]*.*

90. This judgment is related to the offense of rape to the detriment of a minor, M.I.P.A. The Chamber determined that the motion for cassation filed by the person convicted against the judgment "handed down by the Second Superior Court of Justice of the First Judicial District, which overturned the judgment of acquittal …" was out of order "and in its place it convicted Eric Rosas Gómez … for the crime of rape (*violación carnal*) to the detriment of M.I.P.A." To lay a foundation for its decision the Chamber proceeded to analyze the legal errors alleged by the party that brought the motion, in particular those related to the "appreciation of the evidence" that was the basis of the judgment challenged in cassation.

91. In that regard, the Chamber determined that "this case in particular involves a judicial proceeding in which the harm suffered by an adolescent who has been raped has been found, which entails detriment to her human rights as a woman." In addition, it reasoned that the victim had been "sexually assaulted by a person who abused her trust and abandoned her, thereby negatively impacting her integrity and sexual self-determination [in addition, she had been] obligated to air these facts before family and persons unknown to her … which evidently entail[ed] her revictimization." On the problem of violence against women, the Chamber found the following, making reference to the Convention of Belém do Pará:

> "… It is important to reiterate that violence against women constitutes a violation of their fundamental rights, limiting fully or partially the recognition, enjoyment, and exercise of their human rights, which according to the international commitments acquired as signers of the Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belém do Pará," and the Convention on the Rights of the Child, in which it is specifically provided that the States Parties adopt measures of protection for children against any form of harm they may suffer, including from the investigation, processing, and subsequent observation of the cases, one cannot avoid the comprehensive review of the evidence.

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[94] The State of Panama answered the questionnaire identifying a number of judicial decisions handed down by the Supreme Court of Justice. Three of the judgments presented are related to criminal cases arising from attacks on the life and physical integrity of women; and a fourth one is associated with the crime of rape. From the analysis of the judgments mentioned by the State, the Commission observes that in general these decisions include specific references to the standards of the inter-American human rights system, specifically those related to women's right to be free from violence. The decisions indicated make reference to the content of the Convention of Belém do Pará as a key part of the normative framework that should govern the analysis of cases related to the issue indicated. This section presents excerpts of the judgments mentioned by the State.

> This case in particular is related to a judicial process in which has been verified the prejudice suffered by an adolescent who has been subjected to sexual violence, which entails the violation of her women's rights."

- *Sexual Violence against Women with Disabilities: First Court of First Instance Sitting as Trial Court for crimes of violence against women of the Criminal Judicial Circuit of the Judicial District of the State of Lara, Case No. KP01-P-2007-002312, October 29, 2008, Venezuela*[95].

92. The facts of this case relate to the crime of sexual violence. According to what is indicated in the judgment, the "passive subject" ("*sujeto pasivo*") of this crime "must be … in particular, a woman with a physical or mental disability." In this case, the victim was "an adult woman, 26 years of age, but who suffer[ed] moderate mental retardation, as [had been] demonstrated [in the trial]." In this regard, the Court establishes that the victim's situation of special vulnerability was due to her "disability [since] she [did not have] discernment, therefore she [did not have] the ability to consent or not consent to a sexual act." In addition, the Court indicated that these cases "do not require the use of physical violence or of a threat, it suffices that there be coitus … and that the victim not be capable of freely consenting to said sexual act, in order to satisfy the criminal law definition of carnal act with an especially vulnerable victim." In this judgment, the Commission notes the excerpt corresponding to the Court's analysis of the content of this criminal law definition, indicating:

> "The legal interest protected is 'Sexual Freedom' … because if affects a woman's right to make determinations regarding her sexuality, her right to decide on her own body, rights that must be protected as they are linked to the 'integrity and dignity of a woman as a human being.'
> …
> This offense is considered as one of the most common and degrading ways of exercising violence against women, which is even regulated in international human rights conventions and treaties signed and ratified by the Bolivarian Republic of Venezuela, such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), which provides in its Article 1 on the definition and scope of application thereof, as follows: 'For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.'"[96]

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[95] The State of Venezuela answered the questionnaire by forwarding a series of judicial decisions issued by the court on violence against women at the national level, based on the provisions contained in the "Organic Law on the right of women to be free from violence." According to the information provided as an attachment by the State in its response to the questionnaire, specifically in the text of the "Organic Law on the right of women to be free from violence," Article 116 provides for the creation of these courts in the following terms: "The Courts on Violence against Women are hereby established and shall have their seat in Caracas and in each state capital, in addition to the localities determined by the Supreme Court of Justice through the Executive Office of the Judiciary (Dirección Ejecutiva de la Magistratura)." The State indicated that the adoption of this Law has as its objective "to prevent, address, punish, and eradicate violence against women, in any of its manifestations and spheres, fostering changes in the sociocultural patterns that support gender inequality and the relations of power over women, to favor the construction of a just, democratic, participatory, parity-based, and proactive society."
Specifically, the State presented excerpts from 14 judicial decisions presented schematically in "the order of the offenses that are contemplated in the Organic Law on the right of women to be free from violence." According to the systematization by the State, the judgments mentioned are associated with the issues of: (i) psychological violence; (ii) harassment; (iii) physical violence; (iv) sexual violence; (v) carnal act with especially vulnerable victim; (vi) lascivious acts; (vii) violence in the workplace; (viii) property-related and economic violence; (ix) forced sterilization; (x) public offense for reasons of gender; and (xi) trafficking of women, girls, and adolescents. This section presents excerpts from various of those judgments in which express reference is made to the content and provisions of the Convention of Belém do Pará.

[96] Having shown the elements of the criminal law definition and the situation of special vulnerability of the victim, the Court also indicated that the crime analyzed "require[d] malicious intent as a subjective element," which had been shown as the aggressor, "taking advantage of the relationship of trust that existed as he was seen by the aggrieved as the Evangelical Pastor …, anticipating that the victim was alone at her residence, and taking advantage of the victim suffering mental retardation, constrained her to put up with being carnally penetrated against her will." Mindful of these considerations, the Court determined the guilt of the accused and imposed a sentence of 17 years and six months in prison.

93. Together with the foregoing, the Commission observes that in said judgment the court took into account various international standards on the definition of the crime of sexual violence. In particular, the Commission notes that the judgment refers, among others, to the IACHR's decision on the merits in the case of *Raquel Martín de Mejía* discussed earlier:

> "In our inter-American system for the protection of human rights, the Inter-American Commission, in Report 5/96, Case No. 10,970 of March 1, 1996, referred to this offense in the following terms: … 'Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.'"[97]

94. In addition, the judgment puts forth an important analysis on the right of the victim to be heard in the course of the process. In this respect, the Court considered first that "the facts … refer[red] to one of the offenses ... in which there is the possibility of minimal evidentiary activity beyond the statement by the victim, due to the impossibility of there being any other direct witness."[98] Nonetheless, it took into account that:

> "… the Organic Law on the Right of Women to be Free from Violence is the concretion of the Convention of Belém do Pará, ratified by Venezuela by Approving Law of November 24, 1994, signed into law by the President of the Republic on January 16, 1995, and published in the Official Gazette on that same date, thus the resolution of this situation has to be based on the special nature of the offenses of gender violence, and in particular of offenses that entail sexual violence, since they cannot be categorized as common crimes for one would run the risk of such crimes remaining in impunity."

95. Mindful of the foregoing, the Court proceeded to undertake an analysis on "weighing the constitutional rights in confrontation"[99], and in this respect concluded that:

> "… as it is a peremptory duty of this court to ensure the victim the right to be heard and to intervene in a trial that is of direct interest to her, for it affects her and it has affected her, and in keeping with the right of the offended person herein to intervene in the proceeding even when she has not come forward as a private accuser, in keeping with the content of Article 37 of the Special Organic Law, it is for that reason that based on elemental principles of justice, in keeping with the provisions of Articles 2, 21(2), and 55 of the Constitution of the Bolivarian Republic of Venezuela, Article 4 in its chapeau and sections (f) and (g), Article 7(f), all of the

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[97] The Commission also observes the references made in the judgment on the definition of this offense, in keeping with the decision of the International Criminal Tribunal for the former Yugoslavia, in its judgment of November 16, 1998; the International Criminal Tribunal for Rwanda, in its decision of September 2, 1998 (Akayesu Case); and a decision by the European Commission on Human Rights (Case of Aydin v. Turkey) of September 25, 1997. Of these references the Court indicated that "said international instruments and the international case-law have been developed by the Organic Law on the Right of Women to be Free from Violence, [with which] one seeks to carry out the constitutional mandate by which the State guarantees the unwaivable and interdependent enjoyment and exercise of the human rights of women, as well as their right to develop one's own personality, without any type of limitations." In addition, the Court indicated that "the contributions in the case-law and the doctrine to which we have referred, concerning the seriousness of the offense that concerns us in the instant criminal case, is evident, and has been taken into consideration by this trier for the application of the penalty, heeding the principle of proportionality."

[98] Specifically, the consideration by the Court on this point had to do with the fact that the victim's statement had not been put into evidence.

[99] Specifically the Court indicated that "… the judicial organs should not only adhere strictly to the law in their resolutions, but they should also consider the fundamental values that are advocated by our State, among them justice and equality, … the rights of the community should be above individual rights, so as to maintain social peace and thereby do justice, which is why the solution to such situations is to apply "the comparative weighting of constitutional rights."

> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Articles 1, 10, and 37 of the Organic Law on the Right of Women to be Free from Violence, and pursuant to Article 13 of the Organic Code of Criminal Procedure, in order to seek the truth of the facts this court considers it necessary to hear the victim, and, taking into consideration her mental state, the court drew on the assistance of a psychiatric medical expert, as the interdisciplinary team had yet to be constituted, and in those terms and conditions said testimony was taken."[100]

- *Aggravating Circumstances: Judgment, Court of Appeals, Antofagasta, May 11, 2007, Chile.*

96. This judgment relates to a *recurso de nulidad* presented by a criminal public defender against a judgment issued by the Oral Justice Tribunal in Criminal Matters from Antofagasta. The appealed judgment condemned to prison (*pena única de presidio simple*) the accused C.A.C.V. as author of three rape crimes. The defender alleged that the Tribunal incurred in the *causal de nulidad* established in the Criminal Process Code since the judgment applied erroneously and unconstitutionally the aggravating circumstances established in Article 12 N° 18 of the Criminal Code – "to commit a crime in the home of a woman". The defender alleged specifically that these aggravating circumstances "are not in harmony with the constitutional norms related to equal treatment between persons and the prohibition of arbitrary discrimination established in international human rights law". For these reasons, the defender requested that the norm was not applied making reference to Article 24 of the American Convention on Human Rights, several dispositions of the International Covenant on Civil and Political Rights, and the Political Constitution of the Republic.

97. The Court of Appeals concluded that the Oral Justice Tribunal did not incur any errors by applying the aggravating circumstances. To the contrary, it considered that this Tribunal applied in an strict fashion the current legal norms in force and in conformity with international human rights law, presenting the following considerations:

> SECOND: That in the first place, it should be noted that the appellant is not disputing the events considered proven by the Oral Justice Tribunal nor the other aggravating circumstances considered for the crimes of rape committed on November 24, 2005, January 15 and 22 of 2006 in the city of Tocopilla.
>
> THIRD: That the constitutional and international norms cited by the appellant are related to the equality of rights, duties and the exercise of the same, highlighting expressly that Article 1 of the Political Constitution of the Republic that persons are born free and equal in dignity and, as stated in its subset 3, "the State is at the service of the human person and its end is to promote the common good, which contributes to create the social conditions that allow all and each of the members of the national community their spiritual and material realization, with full respect with the rights and guarantees established by this Constitution.
>
> FOURTH: That Article 12 of the Criminal Code highlights that: Aggravating Circumstances are: N°18 "To commit the event with disrespect for the dignity, authority, age or sex of the home of the victim, when the victim has not caused the event".
>
> FIFTH: That the aggravating circumstances represent States or situations produced or provoked by the perpetrator which increase his criminal responsibility, since they reveal in him a larger moral perversity or social danger (p. 250, Gustavo Labatut Glena, Criminal Law, Chapter 1, 8° Updated Edition, Legal Edition of Chile).

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[100] Additionally, the Commission observes that in these considerations the Court also took into account the content of Article 2 of the Convention of Belem do Pará.

SIXTH: The principle of equality of the law is not affected either, since all persons that execute this act in the circumstances reviewed in Article 12 number 18 of the Criminal Code will have this aggravating circumstances applied to them.

SEVENTH: That in this order of ideas, the Justice Oral Tribunal, by imposing on the perpetrator sentenced, in his capacity as the perpetrator for the crimes of rape to the prejudice of S.I.M.C. and C.C.B.S. on January 15 and 22 of 2006, signed with numbers 2 and 3, increased by the application of the aggravating circumstance contemplated in Article 12 N° 18 of the Criminal Code, did not incur in any error. To the contrary, the Tribunal strictly applied the legal norms in force.

Women in a Situation of Forced Displacement

- *Displaced Women and Their Particular Risk to Human Rights Violations: Judgment T-025 of 2004 and Order 092 of 2008, Constitutional Court, Colombia.*

98. The IACHR has ruled repeatedly on the grave impact of forced displacement on women, who constitute approximately half of the displaced population in Colombia. It has expressed its concern about the special consequences of displacement for women, especially the "radical, traumatic and sudden change in their family structure and roles, geography, culture, community and socio-economic standing, and their exposure to threats, violence and discrimination based on their gender, perpetrated by either the actors of the conflict that caused the displacement or the receiving populations."[101]

99. In that context of concern, it has recognized as a positive gain the publication of judgments and orders by the Constitutional Court of Colombia setting important standards of protection for the displaced population, particularly women.

100. One of the first judgments discussed by the IACHR on this topic was Judgment T-025 of 2004, which addresses a series of rights of the displaced population that are being violated within the country, and the need of the Colombian State to ensure a level of protection for this population. The Court, in that judgment, identifies the minimum of protection that the displaced population should receive from the State, which comprehends a series of important rights for women, including: to be registered, to special protection, to immediate assistance for three months, to be issued a document that accredits their registration in a health promotion agency, to return in safe conditions, and to identify specific circumstances of their personal situation to define how they can generate income, among other rights.[102]

101. The IACHR has emphasized that for women this decision is extremely important, since the Court expressly establishes "the importance of consulting the opinion of women in the definition of humanitarian assistance programs, the need to overcome an assistance-driven perspective that reinforces and reproduces discriminatory practices against women and the relevance of formulating a public policy providing differentiated attention, in two key aspects: including sex as a suspect criteria of discrimination for the interpretation of Law 387 of 1997 and adapting information systems to have updated data disaggregated by sex."[103] In the context of the

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[101] IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 70; IACHR, Chapter V, *Annual Report 2009*, *Follow-up Report on the Report Violence and Discrimination against Women in the Armed Conflict in Colombia,* para. 27.

[102] IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 191.

[103] IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 192.

judgment, the Constitutional Court makes reference to the relevant inter-American human rights case-law in the following terms:

> "Notwithstanding the importance of the line of case-law on forced displacement, this section does not have as its objective making an exhaustive recounting of the Court's case-law on the matter, but, first, to determine the scope of the rights of the displaced population that have been protected by this Court, mindful both of the constitutional and statutory framework, and of the interpretation of the scope of such rights that was compiled in an international document, the Guiding Principles on Internal Displacement of 1998. This latter document was a compendium of the provisions on internal displacement in international human rights law, international humanitarian law, and, by analogy, in international refugee law, and contributes to the interpretation of the provisions that are part of the system of protection.[104] A description of the content and scope of the Guiding Principles on Internal Displacement is found at Annex 3 to this judgment.
>
> ....This Court has also emphasized that due to the circumstances that surround internal displacement, the persons – mostly women heads of household, children, and the elderly – who are forced "to suddenly abandon their place of residence and usual economic activities, as they must migrate to another place within the boundaries of the national territory" to flee from the violence caused by the internal armed conflict and by the systematic repudiation of human rights or of international humanitarian law, they are exposed to a much greater level of vulnerability, which implies a grave, massive, and systematic violence of their fundamental rights, and which, accordingly, merits the special attention of the authorities: 'Persons displaced by the violence find themselves in a state of weakness that makes them deserving of special treatment by the State." Along these same lines, the Court has indicated "the need to incline the political agenda of the State to the solution of internal displacement and the duty to give it priority over many other topics on the public agenda," given the fundamental impact and that scale and psychological, political, and socioeconomic consequences of this phenomenon on the national life."

102. Judgment T-025 was followed by Order 092-08 of the same Court, handed down to protect the fundamental rights of women displaced by the armed conflict. In the context of this judgment, the Constitutional Court verified that forced displacement has a disproportionate impact on women due to the various gender risks identified as causes of displacement.

103. The IACHR has commented on this ruling, considering it "of paramount importance in preventing the disproportionate impact that forced displacement has on women and in providing services to and protecting women who are victims of forced displacement."[105] In the judgment, the Court identified 10 risks that women face caused by displacement, including the risk of sexual violence due to the seriousness and widespread incidence of this form of violence, and 18 gender facets of forced displacement that have a differential impact on women, including patterns of discrimination and violence, among other risks. Accordingly, the Court established the duty of the authorities to prevent the disproportionate impact of displacement on women and to guarantee the fundamental rights of the women affected by this phenomenon, and it ordered that 13 programs to protect women be designed and implemented, with the participation of the Inter-American Commission on Human Rights, among other entities.

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[104] The Court at note 22 mentions the Inter-American Commission on Human Rights among the organs that "have recommended the application of these principles by various authorities of the states in which the problem of internal forced displacement occurs…."

[105] IACHR, Chapter V, *Annual Report 2009*, *Follow-up Report on the Report Violence and Discrimination against Women in the Armed Conflict in Colombia,* para. 30.

104. The Commission notes the following considerations put forth by the Court, which relies heavily on the case-law of the inter-American human rights system:

> "a. In the present instance, the Second Chamber of Revision of the Constitutional Court adopts comprehensive measures for the protection of the fundamental rights of displaced women by the armed conflict in the country, and the prevention of the disproportionate gender impact of the armed conflict and the forced displacement. Such measures consist of, in summary, in i) orders to create 13 specific programs to fill the existing voids in the public policy for the attention of forced displacement from the perspective of women, in order to effectively address the gender risks of the armed conflict and the gender features of the forced displacement, ii) the establishment of two risk constitutional presumptions to safeguard displaced women, iii) the adoption of individual protection orders which are concrete for 600 displaced women in the country, and iv) the communication to the Prosecutor General of the country of numerous stories of sexual crimes committed in the framework of the internal armed conflict in Colombia.
>
> The factual underpinning of this decision is the disproportionate impact, in quantitative and qualitative terms, of the internal armed conflict and of forced displacement on Colombian women. The legal underpinning of this ruling is the nature of subjects of reinforced constitutional protection of displaced women by mandate of the Constitution and of the international obligations of the Colombian State in the area of human rights and international humanitarian law.
> …
> I.4.2. Applicable international obligations. Equally paramount are the international obligations of the Colombian State in relation to the prevention of discrimination and violence against women, particularly of the women victims of the armed conflict, such as displaced women. These obligations derive mainly from international human rights law and international humanitarian law, which are directly applicable to the problem of preventing the disproportionate impact of forced displacement on women, and protection of the fundamental rights of women effectively displaced by violence.
> …
> I.4.2.1. International obligations in the area of the protection of human rights. In the realm of international human rights law, the Court recalls the state obligations arising from women's right to live with dignity, free from all forms of discrimination and violence. These obligations are set forth mainly in (a) the Universal Declaration of Human Rights, (b) the International Covenant on Civil and Political Rights, (c) the American Convention on Human Rights, (d) the Convention on the Elimination of All Forms of Discrimination against Women, and (e) the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.
>
> II.2 The Disproportionate impact of forced displacement on women in quantitative and qualitative terms. Gender facets of forced displacement
>
> As a result of the difference and sharpened impact of the Colombian armed conflict on women, they have been affected in a manifestly disproportionate way by forced displacement, in quantitative and qualitative terms – that is, in relation to the high number of displaced persons who are women, and the different nature and depth with which forced displacement by the armed conflict makes difficult, obstructs, and impedes the exercise of the fundamental rights of the women affected. The harshness and disproportion with which displacement affects Colombian women has led to institutions such as the Rapporteurship on the Rights of Women of the Inter-American Commission on Human Rights to characterize forced displacement in itself as a typical manifestation of violence against women in the context of the armed conflict.
> …
> Internal displacement has numerous gender facets that explain its qualitatively disproportionate and differential impact on women. The gender facets of displacement on

which the Chamber has been alerted are 18 in all, and individually entail serious violations of the human rights of the persons affected; their cumulative effect, which mutually reinforces them and therefore is manifestly contrary to the Constitution and to the principle of human rights on which it is based, affects at the same time all women affected by displacement. These gender facets can be grouped in two main categories: (1) the patterns of gender violence and discrimination that pre-exist in Colombian society and which are exponentially intensified by both (a) the living conditions of displaced women and (b) the differential and aggravated impact of the failures of the official system of attention to the displacement on women, and (2) the specific problems and needs of displaced women as such, which are not experienced by women not displaced, or by displaced men."

III. The differential and heightened impact of the armed conflict on women. Gender risks and extraordinary burdens for women in the context of the armed conflict, strict differential approach to preventing the forced displacement of women

The Court notes, from the outset, that both series of factors causing the differential and heightened impact of the armed conflict on women derive in turn from the persistence and prevalence of structural social patterns that foster discrimination, exclusion, and marginalization which in themselves are experienced by Colombian women in their daily lives, with the alarming levels of violence and subordination that are inherent to this situation in both public and private spaces, and which place them at a disadvantage in the point of departure for dealing with the impact of the armed conflict in their lives. International organizations such as the Inter-American Commission on Human Rights have repeatedly emphasized 'their concern over the gender discrimination that affects Colombian women, in particular in the areas of work, education, and their participation in political affairs, as well as the different forms of violence,' and have expressed their alarm at the lack of state measures aimed at eliminating the ordinary cultural factors that are 'pre-existing' in relation to the armed conflict, particularly stereotypes and sexist or degrading representations of women, which foster their discrimination and submission to violence – especially sexual violence, family violence, and human trafficking. As has been demonstrated before this Chamber, these pre-existing structural patterns are underscored, exploited, capitalized on, and degenerated by the actors who take part in the armed confrontation; hence, as will be seen, the women affected by the internal conflict are victims of a spiral of aggravation and deepening of discrimination, exclusion, and gender violence that prevail in the country. As the Inter-American Commission explains:

45. The IACHR has repeatedly stated that both civilian men and women in Colombia have their rights violated during the Colombian armed conflict and suffer the worst consequences. However, although both suffer human rights violations and bear the burdens of this conflict, the effects are different for each. The source of this difference is that Colombian women have suffered situations of discrimination and violence because they are women since they were born, and the armed conflict has worsened and perpetuated this history. The violence and discrimination against women is not solely the product of the armed conflict–they are fixtures in the lives of women during times of peace that worsen and degenerate during the internal strife.

46. Within the armed conflict, all the circumstances that have historically exposed women to discrimination and to receive an inferior treatment, above all their bodily differences and their reproductive capacity, as well as the civil, political, economic and social consequences of this situation of disadvantage, are exploited and manipulated by the actors of the armed conflict in their struggle to control territory and economic resources. A variety of sources, including the United Nations, Amnesty International and civil society organizations in Colombia, have identified, described and documented multiple forms in which the rights of women are infringed upon in the context of the armed conflict, because of their condition as women.

III.1.4 The risks arising from family, affective, or personal contact – voluntary, accidental, or presumed – with the members of any of the illegal armed groups that operate in the country, mainly due to accusations or reprisals carried out *a posteriori* by the enemy bands

In all cases it is a question of acts which, according to the Inter-American Commission on Human Rights, constitute part of the military strategies whose objective is 'wounding, terrorizing and weakening the enemy to advance in the control over territories and economic resources. Women can be direct or collateral victims of different forms of violence, as a result of their affective relationships as daughters, mothers, wives, partners or sisters.' This same entity reports: 'Through acts of physical, psychological and sexual violence, the armed actors seek to intimidate, punish and control women for having affective relationships with members of the opposing faction, for disobeying the norms imposed by the armed actors or for participating in organizations perceived as the enemy. These acts, however, do not solely intend to dehumanize the victim as women. These aggressions additionally serve as a tactic to humiliate, terrorize, and wound the "enemy," either in the family nucleus or community of the victim.'

II.2 The specific risk of sexual violence, sexual exploitation, or sexual abuse in the framework of the armed conflict clearly entails a serious repudiation of the fundamental rights protected by the Constitution, international human rights law, and international humanitarian law. The authorities have the duty, which cannot be postponed, to adopt measures aimed at preventing, punishing, and eradicating these forms of violence, giving the victims due attention.

Sexual violence is expressly proscribed by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which defines violence against women at its Article 1 as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere,' and elaborates on this definition at Article 2, clarifying that violence against women includes 'physical, sexual and psychological violence … that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment,' as well as such sexual violence 'that is perpetrated or condoned by the state or its agents regardless of where it occurs.' The positive obligations of the State in the face of sexual violence, and to prevent it, as well as to assist its victims, are described in Articles 7 and 8 of that convention, transcribed above. Moreover, pursuant to Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, Colombia has the international obligation to take 'all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.' This international obligation is reinforced by the commitments acquired by the Colombian State pursuant to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. At a more general level, sexual violence constitutes a direct repudiation of the right to personal integrity, and, as recognized by international case-law, may constitute the crime of torture if all other elements required are present, or a form of cruel, inhuman, or degrading treatment."

Violence and the economic, social and cultural rights of women

- *Violence against Women in the Workplace: Second Chamber of the Supreme Court of Justice, Judgment 00055, Case 03-00087-0505-LA, February 4, 2005, Costa Rica*[106]*.*

105. The above-noted judgment concerns a case in which the plaintiff began to work for the respondent company in 2000 and continued until February 2003, when her employment contract ended. She justified this decision by reference to the "rude, vulgar, and disrespectful treatment" that she received on several occasions from the Director of the respondent firm. The plaintiff turned to the justice system to have the respondent firm pay amounts due pursuant to the labor relationship. The judgment of first instance ruled partially in plaintiff's favor, in relation to vacation pay and bonus pay, but the Superior Labor Court of Heredia, on hearing the appeal of this judgment, overturned it and ordered the respondent firm to pay the plaintiff additional sums. In response, the firm's counsel before the courts filed several grievances with the Supreme Court of Justice.

106. The Second Chamber of the Supreme Court, in its resolution, made the following pronouncements equating the labor abuse received by the plaintiff with violence against women, a result of stereotyped and discriminatory forms of conduct and the unequal power of men and women in this realm:

> "In view of the grievances expressed by the special judicial representative of the respondent, the Chamber has undertaken to study the set of evidence produced in order to evaluate whether the claims made in the motion are well-founded. With respect to the evaluation of the statements by witness Cedeño Delgado, it is true that the court declined to admit her statements because that witness was not the partner of the plaintiff. The appellant argues that the change in company did not necessarily mean transfer of offices, because these always remained in the same place; but what is clear is that in effect, based on the testimony of Ms. Cedeño Delgado it clearly appears that she was not a worker of the company sued at the time the plaintiff worked there. At that time the witness only went to the facilities, or spoke with her representative by telephone, thus it is logical to consider that she would have no personal knowledge of the personal situation in which the labor relationship with the plaintiff unfolded. For that reason, the court's conclusion that said deponent did not have sufficient information to cast light on what is under discussion here was on target. As a second grievance, the appellant argues that the words of don Rafael – that she should show her legs to the judge to win the trial – is not grounds for considering the labor contract terminated, for the plaintiff, as a legal professional, knows perfectly well that this is not possible. In addition, the expressions "*pinche vieja*" or "*vieja gorda*" are regionalisms expressed by the respondent with affection. Nonetheless, it is not at all possible to accept that argument.
>
> The labor contract unfolds on the bases of an essential ethical content in which the parties are obligated to act in keeping with good faith, equity, usage, custom, or the law…. Such a situation has merited the adoption of a varied set of legal provisions, including internationally recognized ones that seek to give special protection to persons who, due to their particular condition, may be subject to discrimination, violence, or injustice in labor relations.

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[106] The State of Costa Rica presented with its response an annex with information related to judgments issued by national tribunals linked with the themes of gender equality and the principle of nondiscrimination. The excerpts presented correspond to judicial decisions related to "the right to the image of women, nondiscrimination, access to property, the protection of the women worker, sexual harassment, criminalization of sexual violence, among others." This report discusses excerpts of three of those judgments presented by the State addressing violence against women in the labor setting, discrimination by reason of marriage, and discrimination against women in the mass means of communication, applying explicitly the instruments of the inter-American system of human rights.

We must cite here the "Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women" also known as the "Convention of Belém do Pará," incorporated into our legal order by Law No. 7499 of May 2, 1995. The preamble that sets the context for that Convention reads: 'Affirming that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms; Concerned that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men….' According to that convention, every woman has the right to be free from violence, in both the public and private spheres (Article 3). The same Convention specifically defines violence against women as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.' As one can glean, the Convention of Belém do Pará is based on express recognition of the historic presence of power relations that provide for unequal treatment as between men and women. Such stereotyped structures have made it possible for certain discriminatory and unjust actions to have been tolerated as normal, to the detriment of the fundamental human right to freedom and equality, formally recognized ever since the Universal Declaration of Human Rights, at Article 1: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

The appellant argues that the statements by the respondent – to her – to the effect that she should show her legs to the judge to win a trial, as well as the expressions "*pinche vieja*" and "*vieja gorda*," were not grounds for the plaintiff to consider the labor relationship terminated because, given her professional level, she know that such did not follow, and that those expressions are regionalisms used with affection, of which no worker complained. This justification cannot be admitted to tolerate such conduct of disrespect for personal and professional integrity because independent of whether the plaintiff knew that such a petition was entirely unfounded, that mere expression is an affront to her status as a professional woman, that no one is obligated to put up with in her person, insofar as it is violative of the moral and professional integrity of the person. In no way is the respondent's action justified by the circumstance that none of the other workers had complained at any time about the treatment, for it is understandable that some conduct of the employer that verges on disrespect is tolerated in silence by the workers out of fear of confronting their employers; so their silence cannot be accepted as implicit acceptance. From the record it is clear that there was a constant attitude of disrespect on the part of the respondent towards the plaintiff that is reflected not only in expressions of macho bias, such as insinuating to her, even jokingly, that she should show the judge her legs to win a case, but in repeated expressions that go to her status as a woman, and that finally resulted in evidently disrespectful and offensive treatment which, without any doubt, justified the valid decision of the plaintiff to consider the labor contract terminated, as authorized by section 83(b) of the Labor Code…. V.-

It is not true, as the appellant argues, that in cases such as this there are laws that obligate the worker to attempt conciliation prior to considering the labor contract concluded. There is no basis whatsoever for demanding of workers that, in the face of violations of fundamental rights such as those that arose in the labor relationship with the respondent, they must seek to have the employer correct his conduct, for that would imply acceptance that such violations can be tolerated by the legal order as valid. The prior notice that on some occasions is demanded of the worker in order to validly conclude the labor contract is with respect to the performance of labor obligations that the employer has omitted and which by virtue of the principle of good faith are required of the worker so as to make a showing that it is a manifest refusal by the employer to carry out such duties. As these are violations of fundamental rights of the first order, such as the right to personal integrity, no provision or principle can force the worker to put up with such lesions, as they are irreparable offenses."

Homicide and Violence against Women

- *Homicide: Judgment appealed in the criminal proceeding against J.C.R. for the crime against life and personal integrity (homicide) to the detriment of E.E.J., October 22, 2008, Panama.*

107. The facts of this case are related to the homicide committed by Mr. J.C.R. to the detriment of E.E.J., who he was said to have caused "a wound inflicted by a bladed weapon," which caused her death. The assailant was found guilty of the criminal offense of "voluntary manslaughter" ("*homicidio simple*") in the judgment issued by the court of first instance. Nonetheless, the appeal presented by the Public Ministry requested the modification in the characterization of the offense by that of ¨premeditated homicide" ("*homicidio con premeditación*"). In this respect, the Chamber indicated that the offense committed by the person convicted "was not the result of a violent state of emotion" as had been established by the court of first instance, since consideration must have been given to "the circumstances of the place of execution, the nature of the determining motives, and the conduct of the perpetrator prior to the act, conditions provided for in the criminal legislation."

108. In this regard, the Chamber took into account that as appeared from the record, the victim had been subject to threats and prior persecution by the accused, thus "it [was] evident that the action of the defendant constitutes a grave excess of power and force over a woman who he wanted to turn into an object of his property, which finds no justification in the thesis of crime of emotion (*delito de emoción*)." Therefore, the Chamber proceeded to make the corresponding change to the characterization of the offense attributed to Mr. J.C.R.

109. Concretely, the Criminal Chamber of the Supreme Court of Justice of Panama made reference to the Convention of Belém do Pará and to the problem of violence against women in the following terms:

> "One should note the right of every person to be free from violence, in this particular case, the right of every woman in both the public and private spheres, as enshrined in Article 3 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 'Convention of Belém do Pará,' approved by the Republic of Panama, by Law No. 12 of April 20, 1995.
>
> With respect to violence against women, the Criminal Chamber has noted that these acts 'are expressions of a pattern of conduct inclined to physical, sexual, or psychological aggression towards women, which should not be unfamiliar to judicial officers, given the tendency of this form of crime in the contemporary world, where the relevance of a gender approach is recognized, which envisions the existence of hierarchical relations and inequality between men and women expressed in oppression, injustice, subordination, and discrimination, mostly against women, all of which has resulted in the approval of international agreements to eradicate these practices, which are attacks on the human rights of women.'"

- *Attempted Homicide: Release on bond of Raúl Antonio Renwick, accused of the crime of homicide and personal integrity. April 6, 2001, Panama.*

110. The judgment indicates in its "factual foundations" and "considerations" sections that the facts of the case occurred as a result of the wounds by bladed weapon that the accused had caused on "many parts of the body" to the victim, who at the time of the facts was pregnant. According to the judgment, the dispute between the victim and her aggressor was said to have arisen when he insisted that she interrupt her pregnancy for "economic reasons." As a result of the wounds, the victim received emergency care and her child was born by cesarean section. The judgment indicated that according to the expert report "the wounds [inflicted] endangered the life of the patient and the [baby]." The Court in the judgment resolved "to maintain the precautionary measure of preventive detention," denying the "benefit of release on bail" to the accused for the

crime of homicide and personal integrity. To establish a foundation for its decision, the Chamber referred to the provisions contained in the domestic legislation as well as the provisions of the Convention of Belém do Pará:

> "In this context of ideas, we should make reference to Law No. 31 of May 28, 1998, "Law on the Protection of Crime Victims," which indicates, at Article 2(4):
> "The following are rights of the victim:
> ...
> 4. To be considered in his or her personal security and that of his or her family, when the judge or investigative officer must decide or set the sum of a bond for release, or grant the concession of a personal precautionary measure to take the place of the preventive detention in favor of the accused."
>
> Together with the foregoing, we should refer to the INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN "CONVENTION OF BELÉM DO PARÁ," approved by the Legislative Assembly as Law No. 12 of April 20, 1995, which indicates as follows at Article 2:
>
> "Violence against women shall be understood to include physical, sexual and psychological violence:
> a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse."
>
> In addition, Article 7(d) of said convention indicates that legal measures must be adopted aimed at getting the aggressor to refrain from harassing, intimidating, threatening, harming, or endangering the life of the woman victim of violence.
>
> We should recall that the law is a set of provisions among which are included the international treaties approved by Panama by law, which become part of the positive law and consequently acquire the dimension of applicable law.
>
> Accordingly, the legal order is imposed on all members of society, and the trier must take into account the principles enshrined in favor of the accused, but without setting aside the rights of the victims and members of society. Violence or mistreatment of women constitutes a violation and an offense to human dignity, which diminishes the recognition and enjoyment of these rights.
>
> Finally, we must state that even though the offense of attempted homicide allows for release on bond, it must be denied, for in the instant case its concession may give rise to a situation of ever graver danger for the victims."

- *Aggravated Homicide: Appeal (Recurso de apelación) in the trial of W.S.L. for the crime against life and personal integrity, April 9, 2007, Panama.*

111. The case has to do with the appeal by Mr. W.S.L. of the judgment that declared his responsibility for the crime of "aggravated homicide" of his wife, who at the time of the facts had four children. Specifically, the appellant indicated that a showing had not been made of the "execution of the homicide by atrocious means such as a specific aggravating circumstance set forth in the criminal law definition" since "the fact that the accused threw sand over the body and face of the deceased does not imply intent to make her suffering greater, for the victim was unconscious."

112. Nonetheless, the Chamber proceeded to analyze the circumstances in which the act was committed, and considered it relevant "to expand the concept of atrocious means of execution." In this respect, it indicated that "the aggravated nature of the homicide appears from the fact that the accused, in addition to dealing the victim multiple blows, proceeded to partially bury

her, throwing sand in her facial orifices, which constitutes an atrocious means of committing the crime, for it caused the deceased unnecessary suffering." It also referred to the diligence of the authorities who are involved in investigating acts of violence against women, noting that:

> "Moreover, this higher court considers it necessary to state, as it has in similar cases, its concern over the performance of the investigative authorities in bringing criminal actions in cases of violence against women. On this point, one needs a Public Ministry which, in the investigative stage, pulls together all the evidentiary material necessary to uphold a more forceful request for conviction, attending to each of the particularities of the case, so as to exhaust the circumstances that could aggravate the criminal responsibility of the accused in a case of feminicide, such as the one before us.
>
> Such a manner of proceeding can be demanded of the investigative authorities in light of the commitments our country acquired as of 1995, on ratifying the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, better known as the "Convention of Belém do Pará," which at Article 7 provides that the states parties should act with due diligence to prevent, investigate, and punish violence against women."[107]

113. Finally, in the ruling mentioned, the Chamber proceeded to make the following considerations:

> "All these particularities reveal, in the animus of the perpetrator, major moral insensitivity at the victim's suffering, which moreover was not any stranger, but his partner or concubine, with whom he had four children who today are orphans. This circumstance, which denotes the existence of a de facto conjugal bond or relationship, while not fitting in any of the specific aggravating factors for the criminal definition of homicide, which are therefore inapplicable in view of the principle of legality, does constitute one of the general or common aggravating factors of all criminal conduct, as set forth in Article 67(10) of the Criminal Code, a circumstance whose application was not invoked by the public indictment; and had it been done, it would have enabled the appellate court to review this factual situation, which is important is seeking justice that takes account of gender; in the face of such inactivity this Chamber cannot recognize *sua sponte* that common aggravating factor, based on the principle of *non reformatio in pejus*.
> […]
> … The grave situation of domestic violence in Panamanian society, especially against boys and girls, women, and older adults, and which has repeatedly been denounced by organizations that promote women's rights before the Inter-American Commission on Human Rights, should be a call to all officers of the administration of justice for the purpose of achieving effective protection of the rights of these sectors of the Panamanian population."

[107] In this case, the Chamber indicated that "said responsibility [had been] neglected by the competent authorities [since] the police authorities did not timely respond to the call that [a witness made] at the moment the victim was still alive, when she was subjected to abuse in public, for on at least two occasions the patrol car passed by at a distance from the place where the now-deceased was assaulted."

Violence against Women and Divorce

- *Divorce: "R.R.R.A. v. Y.T.E.C. re: divorce," Agreement and Judgment No. 126, August 25, 2005, Court of Appeals for Civil and Commercial Matters, Third Chamber, Paraguay*[108]

114. The dispute brought before the Court of Appeals has to do with the challenge by Ms. Y.T.E.C. of the judgment that ruled favorably on the divorce suit filed by her husband, "due to her own fault." The court acceded to the respondent's request to find the concurrent negligence of both spouses in the divorce. In the judgment, the court analyzed "the attribution of guilt in the causality of the dissolution of the matrimonial bond" of the case posed.[109] It indicated that:

> "… the existence of serious physical and moral injuries inflicted by the husband on his wife … indicates a situation of continuing and serious abuse, which is an important element when it comes to judging the injurious conduct attributed by the husband to the wife. In effect, it is known that in situations of serious and continuing physical or moral abuse, the person affected develops a series of personality characteristics which have been called the "cycle of violence." Breaking that cycle is an arduous personal task for the person subjected to the violence, and who oftentimes is not successful. This is why the injuries to the other spouse that may have occurred in that process cannot be seen unilaterally, but in the general context in which they occurred."

115. Finally, the Court concluded that:

> "[It having been] shown that the respondent was in this situation of continuing violence, the verbal expressions that [her spouse] presents as the bases of the grievance and wrong to his person cannot be understood outside the context described above, and taking them in isolation would seriously violate norms of preeminent rank such as the various treaties signed by our country in relation to that issue and already referred to above. In effect, such instruments clearly establish that the woman has equal rights as the man in the family, and that violence against women should be eradicated in all its forms. Among these forms of violence, special mention should be made of the violence that occurs in the context of family relations, which answer to power structures in the family, from those who exercise that power to those who suffer it."[110]

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[108] The State of Paraguay reported in its response to the questionnaire that the "Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), ratified by Law No. 605/1995, has been implemented in the ruling handed down by our courts." The State also referred to the judicial resolutions that contain the "application of … the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that have addressed issues related to economic, social, and cultural rights, and women's participation in the family sphere and outside of it." In this respect, the State mentioned a total of 10 judgments related to the standards indicated.
In that regard, the State referred, in its response to the questionnaire, to five judicial rulings, of which it indicated that "one notes the application of this international normative instrument by which one seeks … to prevent, punish, and eradicate violence against women for the purpose of removing the obstacles that impede their access to justice, their normal performance in civil society independent of their age, profession, race, and status as a women, and above all to ensure women in a vulnerable situation the enjoyment of being free from violence, which translates into the enjoyment and full exercise of all their rights." The Commission received a copy of the judgments indicated by the State, four of them by the Third Chamber of the Court of Appeals for Civil and Commercial Matters of Asunción; and another by the Fourth Chamber of the Court of Appeals for Civil and Commercial Matters.

[109] With respect to this point, the court indicated that "preventing a woman from being able to show that the dissolution of the bond of her marriage has been due to the physical and/or moral violence to which she may have been subject is also a form of violence, this time organic [illegible]. Such considerations make it clear that the issue of imputability of guilt has been posed and is part of the *thema decidendum* in this case."

[110] In the analysis of the case the Court found that both spouses had committed aggressive acts to the detriment of the other. Nonetheless, the court took into account the context in which the assaults by the wife took place, bearing in mind that "the verbal reaction of the respondent [the wife] on which the ground alleged by the plaintiff is based finds its antecedent in the psychological and spiritual situation stemming from lengthy abuse by the husband. In such circumstances one can only accede to the respondent's request to find the concurrent fault of both spouses in the divorce." Therefore, the court declared that it would

116. In the judgment, the Court referred to the Convention of Belém do Pará, among other international instruments, noting as follows:

> "[Paraguay] is signatory of numerous conventions and treaties that have regulated the subject of gender-based discrimination and violence. These include international instruments such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women [Convention of Belém do Pará] that have provisions that are related to this point, as well as the CEDAW and its optional protocol."

- *Divorce: G.R.R. v. M.E.R.A. re: divorce. Agreement and judgment No. 136 of December 31, 2009, handed down by the Court of Appeals for Civil and Commercial Matters, Third Chamber, Paraguay.*

117. In this case, a motion for annulment and appeal from the judgment of first instance was filed, giving rise to the action filed by Mr. G.R.R. against Ms. M.E.R.A. on the grounds provided for in Article 4 of Law 45/91 (de facto separation for more than one year, without an interest in marrying on the part of either of the two). The motion filed by Ms. M.E.R.A. focused on the need to declare the divorce due to the "exclusive fault of [her] husband." In this respect, the Chamber determined "to rule favorable on the motion of appeal filed and [declare] the divorce due to the exclusive fault of Mr. G.R.R."

118. In this respect, the Chamber considered that while the spouse had engaged in the grounds for divorce that is "abandonment of the home," this situation was

> "… a logical consequence of the excessive cruelty, mistreatment, grave offenses, malicious abandonment of the home, adultery, and de facto separation for more than one year in which [her spouse] engaged. In other words, [that] action should [have been] considered a normal reaction – indeed, even a sensible one – after having suffered the treatment of which she was a victim for several years."[111]

119. The Chamber added that in this type of situation:

> "Excessive cruelty acquires, in the family and domestic realm, certain special connotations that imply asymmetric power relations in which context one should examine the action of the victim. Thus, the aggressive conduct of the victim in response to this critical situation cannot be seen as a genuine and autonomous aggression, aimed at provoking harm in the other person, but as a response of self-preservation and legitimate self-defense. It is understood that in terminating the matrimonial bond in such circumstances one cannot speak of fault concerning a person who has been the victim of violence."[112]

"accede to the action for divorce of the marital bond, declaring the marriage between the spouses dissolved due to the concurrent fault of both … in the divorce."

111 On "relations that unfold in the realm of the family and living together," the Chamber indicated that "the so-called "*injurias*" … take on a very different connotation…. *Injuria* is technically an unlawful human act, done for the purpose of causing harm by means of an outrageous deed or word…. *Sevicia*, for its part, refers to acts committed with excessive and systematic brutality or cruelty…. The violent and systematic nature of *sevicia* leads us to the concept of family and domestic violence…. This situation leads the victim to a state of isolation, degradation of her self-esteem, and sense that her situation and suffering are inexorable, which keeps her from seeing any way out of the problem."

112 In addition, the Chamber held that Mr. G.R.R. had admitted "*la sevicia* (extreme cruelty) and abuse, voluntary and malicious abandonment of the home, and adultery, alleged by his spouse." In that sense, the Chamber indicated that "one cannot ignore the acts of violence alleged and [that were found] duly shown in the record," in particular those documents that showed the physical assaults suffered by Ms. Marta Rodríguez.

120. Mindful of the foregoing, the Chamber determined that:

> "Both spouses cannot be situated on the same plane of culpability. It has been shown that the injurious attitudes of the [spouse] are not determined by the realization of an isolated act and produce in the victim who suffers them a destructive effect of unimaginable dimensions. Their reiteration and frequency are the determinants of the scale of the harm caused. Each of the acts of aggression magnifies the next and the effect is reinforced."

121. Finally, as a basis for the preceding considerations, the Chamber noted:

> "The provisions contained … in both the domestic and international order are applicable to the type of conduct that has been described…. Failing to recognize this is ignoring clear-cut realities and *tabula rasa* the supra-statutory provisions that contain them, such as the provisions of the Convention of Belém do Pará on the eradication of all forms of violence against women."

Human Trafficking

- *Human Trafficking: First Court of First Instance Sitting as Trial Court with Jurisdiction over Crimes of Violence against Women of the Criminal Judicial Circuit of the Judicial District of the state of Zulia. Date of publication: Case No. VPO2-P-2007-0013108, January 20, 2010, Venezuela.*

122. The facts of this case are related to the complaints lodged by a woman who had been the victim of human trafficking and who was taken by deceit to Europe with the promise of obtaining work as a cook. According to the facts narrated in the judgment, on reaching the destination, the victim was entrusted to an enterprise dedicated to the illegal trafficking of persons for purposes of sexual exploitation, and was held in a brothel where she was forced to "have sexual relations with various men." In addition, the victim was physically assaulted for having refused to work in that place. Based on the considerations made by the court, the decision contained in the judgment indicates that it was ordered to absolve the accused of the crime of threats. Nonetheless, he was found guilty of the crime of human trafficking and sentenced to 17 years and six months in prison. In this decision, the court offered a series of considerations regarding the "gender matter," highlighting the references made in the statement of motives of the Organic Law on women's right to be free from violence in the following terms:

> "From the international standpoint the most important legal instruments in the area of women's human rights, and especially on violence against women, are the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará, 1994) and the Convention on the Elimination of All Forms of Discrimination against Women (1979), together with the United Nations Declaration on the Elimination of Violence against Women (1993)…. Hence in the present Law on Gender Violence, the subject who suffers it is clearly delimited: women…. Domestic violence is conceived of as an aggravated modality of physical violence, considering that physical violence, considering that the perpetrator of the act is the partner, former partner, or a person belonging to the domestic or family realm of the woman, giving rise to a stiffer punishment…."

123. In addition, one should note the court's considerations in relation to "the different international provisions and conferences that exist on trafficking of women." In this respect, the judgment stated:

124. "There are international provisions that constitute the framework in which the different countries should address the problem of cross-border trafficking of women and children. They are legal instruments which, once signed and ratified, have the force of law.

> In addition, there are Declarations and Programs of Action of the main UN world conferences that demand joint action on the part of governmental organizations, non-governmental organizations, and other entities to prevent and suppress these crimes. The documents in this last category are not legally binding, but have great ethical and political influence, and, accordingly, can be used at the local, national, and regional levels. INTERNATIONAL PROVISIONS ON TRAFFICKING OF WOMEN."[113]

Physical and Psychological Violence

- *Physical and Psychological Violence: Court on violence against women sitting as trial court of the city of Barquisimeto, state of Lara. Judgment of April 22, 2009, Venezuela*

125. In this case, Ms. M.E.V.P. filed a complaint against citizen E.U.M.C. for having assaulted her physically and verbally since 1998, the last act of violence having occurred on July 28, 2003. The Public Ministry characterized these acts as the crime of "Physical Violence and Psychological Violence," defined at Articles 17 and 20 of the derogated Law on Violence against Women and the Family. On the basis of these facts and that legal characterization, the trial court admitted all aspects of the accusation, and the accused admitted the facts that were the subject of the trial, for the purpose of being granted a conditional stay of the proceeding, which he was granted.

126. The Court's decision was to convict, based on the conditional stay of the proceeding, with a judgment of one year and two months in prison. The IACHR notes the legal development, as relevant, of the offense of "psychological violence"; the value and weight of the victim's statement in these cases; and the general definition of the problem of violence against women in the following terms:

> It is necessary to determine what is understood by VIOLENCE AGAINST WOMEN for the purposes of verifying whether the facts that are considered as proven may be considered gender violence, … more specifically, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) provides at its Article 1 on the Definition and Scope of Application: "For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."
>
> … in the same Convention, at Article 2, when listing the conduct that can be considered as violence against women, it provides at subsection (b): "that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place…."
>
> In our legislation such international instruments, at the time of the facts … were developed in the Law on Violence against Women and the Family.
>
> From this perspective we can affirm that gender violence, in contrast to other types of violence, is considered an attack on human rights.

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[113] Mindful of the foregoing, the Court referred, among others, to the contents of the United Nations Convention on the Elimination of All Forms of Discrimination against Women; the Universal Declaration of Human Rights; the UN Convention for the Suppression of the Trafficking in Persons and Exploitation of the Prostitution of Others; the UN Convention on the Rights of the Child; Convention 182 of the International Labor Organization (ILO); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

In addition to the foregoing, we should mention that psychological violence acts from the aggressor's need for and demonstration of power. One seeks domination and submission through emotional and aggressive pressures. This type of "invisible" violence may cause psychological disorders in the victim, as evidenced in the present matter, psychic destructuring, aggravating physical illnesses, or even provoking suicide.

In every case it is a conduct that causes harm to the victim, it being the most common type of aggression in the context of abusive treatment in the domestic sphere, as in the case under analysis, although it may be hidden or dissimulated under cultural and social patterns and models that render it invisible.

The word of the victim in cases such as the one under analysis is an essential element, as it is one of the offenses considered by legal doctrine as "*delitos intramuro*" or "crimes of clandestinity," in which it is likely that the word of the victim is all there is, which happens in most cases, thus in order to analyze the victim's word we would have to make some considerations which, in this regard, have been considered in the comparative law, but which would not apply in the present case as there is a witness and a psychiatric expert report that validate the victim's word.

- *Physical Violence: First Court of First Instance sitting as trial court with jurisdiction over crimes of violence against women of the Criminal Judicial Circuit of the Metropolitan Area of Caracas of May 27, 2010*

127. Finally, the Commission notes the judgment identified by the State in relation to the crime of "physical violence" in which the content of the principle of equality before the law enshrined in the National Constitution[114] was analyzed in light of the provisions of the Organic Law on the right of women to be free from violence and of the international instruments. In that regard, the Court indicated:

> The organic law [on the right of women to be free from violence] develops, in a centralized and convergent manner, the constitutional protection referred to by Article 21(2) of the Constitution of the Bolivarian Republic of Venezuela, as they constitute a traditionally vulnerable population group.
>
> …As indicated in the preamble of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women: "violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms…. violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men."
> …
> Reinforced by the Declaration on the Eradication of Violence against Women, which states: "violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundation," and it defines it as: "…violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

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[114] The Court referred specifically to the content of Article 21(2) of the Constitution of the Bolivarian Republic of Venezuela, which establishes: "All persons are equal before the law, and, consequently: … 2. The law shall guarantee legal and administrative conditions such as to make equality before the law real and effective manner; shall adopt affirmative measures for the benefit of any group that is discriminated against, marginalized or vulnerable; shall protect in particular those persons who, because of any of the aforementioned circumstances, are in a manifestly weak position; and shall punish those who abuse or mistreat such persons."

128. Mindful of the foregoing, the Court indicated that as the criminal law definition of aggravated physical violence makes it a crime subject to prosecution at the initiative of the authorities:

> "…violence against women constitutes a serious public health problem and a systematic violation of women's human rights, which dramatically illustrates the effects of discrimination and subordination of the woman for reasons of sex in society."[115]

- *Approval of a Settlement Agreement: Judgment of the Court of Appeals with jurisdiction over violence against women of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas, File No. CA-801-09 -VCM, August 12, 2009.*

129. The case concerns a request for approval of the "settlement agreement" entered into by the parties as an "alternative dispute resolution measure" in a case of physical and psychological violence. The Court declares the request to be inadmissible ("*sin lugar*") in the following terms:

> The request for approval of the settlement agreement between the Office of the Notary Public … insofar as the criminal law definitions of physical violence, psychological violence, and threat, provided for and sanctioned at Articles 16, 17, and 20 of that Law in force as of the date … are of public action, prosecutable at the initiative of the authorities, [for] which reason no alternative measure will serve to settle the controversy that arises due to the immediate application of the Constitution of the Bolivarian Republic of Venezuela, at Article 23, in keeping with the American Convention on Human Rights (Pact of San José, 1969), Articles 1, 2, and 24, the Convention on the Elimination of All Forms of Discrimination against Women (1979), at Article 1, World Conference on Human Rights, in the Declaration and Program of Action of Vienna (1993), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém do Pará, at its Articles 1, 2, and 7(a) and (f) … that is why these forms of criminal conduct are to be prosecuted at the initiative of the authorities and that is why no alternative dispute resolution is available in such matters."[116]

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[115] Based on these considerations, the Court proceeded to determine the penalty to be imposed on the accused with respect to which he declared his guilty for the crime of aggravated physical violence committed to the detriment of his spouse. In particular, the court took into account that "the acts of violence … that occurred in the domestic sphere, the spouse being the perpetrator." Therefore, it proceeded to increase the penalty, in keeping with the applicable legislation, the final penalty being nine months in prison.

[116] In this case, the accused was convicted of the crimes of physical violence and psychological violence committed to the detriment of his spouse; and a prison sentence of seven months and 15 days was imposed.

CHAPTER II
DISCRIMINATION AGAINST WOMEN

DISCRIMINATION AGAINST WOMEN

A. Introduction

130. The inter-American system has also begun to develop standards related to discrimination against women. A large part of the analysis of the IACHR and the Inter-American Court on this issue has been focused on the principles of equality and non-discrimination enshrined in Articles 1(1) and 24 of the American Convention; Article II of the American Declaration; in the various provisions of the Convention of Belém do Pará; and in the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"). The obligation of the states to respect and ensure women's right to equality and to be free from all forms of discrimination has been analyzed in decisions on the merits of the IACHR, in its thematic and country reports, and in decisions handed down by the Inter-American Court of Human Rights. The system has also focused a large part of its efforts on defining the link between discrimination and violence against women, in addition to the obligations of the states to respect and ensure these rights in the framework of their general obligation enshrined in Article 1(1) of the American Convention.

131. This section discusses several of the most important standards set by the system in the (a) decisions on the merits of the IACHR; (b) decisions of the Inter-American Court; and (c) thematic and country reports of the IACHR.

1. Decisions on the merits of the IACHR

Sex as a Prohibited Factor of Discrimination

132. One of the first and most important decisions of the IACHR on discrimination against women came in the case of *Maria Eugenia Morales de Sierra*[117], concerning Guatemala. In this case, the IACHR found violations of Articles 1, 2, 17, and 24 of the American Convention when the provisions of the Civil Code of Guatemala related to domestic relations assigned responsibilities and obligations exclusively to the husband, based on his role as income generator, and considering that the role of the woman is wife, mother, and housewife. The Commission concludes that far from ensuring "equality of rights and adequate balancing of responsibilities" within marriage, the provisions cited institutionalize imbalances in the rights and duties of spouses[118] and had a continuing and direct effect on the victim.[119] This decision also confirmed that distinctions based on factors explicitly mentioned in the international human rights instruments, such as the American Convention, and statutory categories such as sex and race, are subject to a higher grade of "especially strict scrutiny," by virtue of which the states should assert a particularly important end and very weighty reasons for justifying the distinction.[120]

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117 IACHR, Report on the Merits No. 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001.
118 IACHR, Report on the Merits No. 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.
119 IACHR, Report on the Merits No. 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 52.
120 IACHR, Report on the Merits No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 36.

The Link between Discrimination and Violence against Women

133. The Commission also stated in the case of *Maria Eugenia Morales de Sierra* its concern in the face of the grave consequences of discrimination against women and stereotyped notions of their roles, and how this cycle of discrimination is closely linked to violence against women. The IACHR subsequently recognized and discussed the link between discrimination and violence against women in the cases of *Maria da Penha Maia Fernandes*[121] against Brazil; *Claudia Ivette Gonzáles et al.*[122] against Mexico; *Valentina Rosendo Cantú*[123] against Mexico; *Inés Fernández Ortega*[124] against Mexico; and *Jessica Lenahan (Gonzales) and Others*[125] against the United States. It also noted in these cases that the States' obligations to act with the due diligence required and to ensure adequate and effective access to judicial remedies are key components for the prevention and eradication of discrimination and its most extreme forms, like violence. The IACHR also emphasizes in these cases in how the multiple factors that may expose a woman to forms of discrimination – on the basis, for example, of age, race, ethnicity, and poverty – should be taken into account by a state in the design of its response to the problem of discrimination and its offshoots.

134. In the case of *Jessica Lenahan (Gonzales) and Others*[126] against the United States, the Commission for the first time pronounced on the issue of discrimination against women under the American Declaration and its close link to the problem of violence against women. In this case, the petitioners allege that the State violated several dispositions of the American Declaration for failing to act with due diligence to protect Jessica Lenahan and her daughters against domestic violence acts committed by her ex-husband and the father of her daughters, even in the presence of a protection order; events which resulted in the death of the girl-children. In this report, the Commission set important standards related to discrimination against women under the American Declaration establishing that: a) the States are obligated under the American Declaration to give legal effect to the duties contained under Article II and its obligation not to discriminate; b) that the obligations under Article II of the American Declaration include the prevention and the eradication of violence against women as a key component of the duty of the State to eliminate all forms of direct and indirect discrimination; c) that in certain circumstances the State can incur responsibility for failing to protect women from domestic violence acts perpetrated by private actors; and d) that when a State does not comply with its obligation to protect women from domestic violence according to what has been established under Article II of the American Declaration, this can also give rise in certain cases to violations of the right to life under Article I of the American Declaration, and the duty to grant a special protection contained in Article VII of the same instrument.

Discrimination on the Basis of Gender: The Content of State Obligations

135. The IACHR ruled more extensively on the problem of discrimination in its decision on the merits in the case of *Karen Atala and Daughters* against Chile; this case is currently before the contentious jurisdiction of the Inter-American Court.[127] In that case, the petitioners argued before the IACHR that the state of Chile was internationally responsible for taking away custody of her three daughters (5, 6, and 10 years of age) from Karen Atala due to discriminatory prejudices based on her sexual orientation.

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121 IACHR, Report on the Merits No. 54/01, Case 12,051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.
122 IACHR, Report on the Merits No 28/07, Cases 12,496-12,498, *Claudia Ivette González et al.* (Mexico), March 9, 2007.
123 IACHR, Report on the Merits No. 36/09, Case 12,579, *Valentina Rosendo Cantú and other* (Mexico), March 27, 2009.
124 IACHR, Report on the Merits No. 89/08, Case 12,580, *Inés Fernández Ortega et al.* (Mexico), October 30, 2008.
125 IACHR, Report No. 114/10, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011.
126 IACHR, Report No. 114/10, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011.
127 IACHR, *Application before the Inter-American Court of Human Rights, Karen Atala and Daughters*, No. 12,502, September 17, 2010.

136. In that case the IACHR set important standards for the principle of equality and the obligation not to discriminate based on gender considerations. As a point of departure for its analysis, the IACHR highlights the different conceptions of the right to equality and non-discrimination.[128] One conception has to do with the prohibition of any arbitrary difference in treatment – understanding by difference in treatment distinction, exclusion, restriction, or preference[129] – and another has to do with the obligation to create conditions of real equality for groups that have historically been excluded and are at greater risk of suffering discrimination.[130] The Commission considers that even though in certain cases both perspectives may be present, each merits a different state response and different treatment in light of the American Convention.[131] In addition, in the different conceptions of the right to equality, the acts or omissions of the state may be related to rights enshrined in the American Convention, or may have to do with any state action that does not have effects on the exercise of the rights set forth in the Convention.[132]

137. Other innovative aspects of the report on the merits in the case of *Karen Atala* that go to gender-based discrimination have to do with: (a) incorporating sexual orientation into the phrase "any other social condition" in Article 1(1) of the American Convention, and (b) the application of a strict scrutiny standard to any difference in treatment based on a person's sexual orientation, as it is presumed to be suspect. In the specific case, after applying a strict test, the IACHR observed that the State had a legitimate end – the imperious social need to protect the paramount interest of Karen Atala's daughters as children – in its actions; nonetheless, it considered that there was no logical causal relationship of means to end, and, therefore, the judicial decisions analyzed did not meet the requirement of suitability, constituting "arbitrary distinctions incompatible with the Convention." For that reason, the IACHR ultimately considered it irrelevant to make reference to the other aspects of the test.[133] The report also presents innovative standards on the scope of the right to privacy, protection of the family, the rights of the child, and the rights to judicial guarantees and judicial protection.

Equality before the Law, The Obligation Not to Discriminate, and the Reproductive Rights of Women

138. The IACHR has also begun to establish important linkages between the right to equality before the law and the obligation of non-discrimination, with key spheres for women's rights, such as women's reproductive rights. For example, in the case of *Gretel Artavia Murillo et al. (In Vitro Fertilization)*[134] against Costa Rica, the IACHR analyzed the scope of a judgment issued by the Constitutional Chamber of Costa Rica that prohibited the practice of in vitro fertilization in that country, in relation to the right to equality before the law enshrined in Article 24 of the American Convention. In that case, the IACHR made important pronouncements on gender equality considering that: (a) the prohibition prevented the victims from overcoming their disadvantage through the benefit of scientific progress, in particular (of a medical treatment),

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128 IACHR, *Application before the Inter-American Court of Human Rights, Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

129 See: United Nations, Human Rights Committee, General Comment 18, Non-discrimination, 10/11/89, CCPR/C/37, para. 7; I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 92; Fourth Progress Report of the Special Rapporteurship on Migrant Workers and their Families in the Hemisphere, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, IACHR, Annual Report 2002, March 7, 2003, para. 87.

130 IACHR, *Application before the Inter-American Court of Human Rights, Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

131 IACHR, *Application before the Inter-American Court of Human Rights, Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

132 IACHR, *Application before the Inter-American Court of Human Rights, Karen Atala and Daughters v. Chile*, September 17, 2010, para. 80.

133 IACHR, Report on the Merits No. 139/09, Case 12,502, *Karen Atala and Daughters* (Chile), December 19, 2009, para. 112.

134 IACHR, Report on the Merits, No. 85/10, Case 12,361, *Gretel Artavia Murillo et al.* (In Vitro Fertilization) (Costa Rica), Case 12,361, July 14, 2010.

there being less restrictive alternatives than prohibiting in vitro fertilization.[135] Second, the IACHR determined that there was a specific and disproportionate impact on women. Accordingly, it held that the technique of in vitro fertilization was a procedure that related more directly to treating women and to their bodies, and hence the greater impact on women of the decision handed down by Costa Rica's Constitutional Chamber.[136] The IACHR also affirmed that the review of the rules and policies based on the principle of effective equality and non-discrimination also takes in the possible discriminatory impact of these measures, even when they seem neutral in their formulation, or are general and not differentiated measures.[137]

2. Decisions of the Inter-American Court of Human Rights

139. The principles of equality and non-discrimination have also been developed in the case-law of the Inter-American Court.

Interrelation, scope and content of Articles 1.1 and 24 of the American Convention

140. From its earliest case-law on the issue, the Court noted in Advisory Opinion 4/84 on the principle of equality:

> The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.[138]

141. The Inter-American Court has also noted, in its OC-18/03, that there is an "inseparable connection" between the obligation to respect and ensure human rights established in Article 1(1) of the American Convention and the principle of equality and non-discrimination.[139] Nonetheless, the most recent case-law has established a difference between these articles, indicating that Article 1(1) incorporates a prohibition on discrimination in the exercise and enforcement of the rights enshrined in the Convention, whereas Article 24 prohibits such discrimination as regards not only the rights established in the American Convention, but in relation to all laws that the state may approve, and their implementation.[140]

142. For the Court, as developed in its judgment in the *Case of the Girls Yean and Bosico* and other subsequent cases, the right to equal protection of the law and to non-discrimination implies that

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135 IACHR, Report on the Merits No. 85/10, Case 12,361, *Gretel Artavia Murillo et al.* (In Vitro Fertilization) (Costa Rica) July 14, 2010, paras. 128 and 130.

136 IACHR, Report on the Merits No. 85/10, Case 12,361, *Gretel Artavia Murillo et al.* (In Vitro Fertilization) (Costa Rica), July 14, 2010, paras. 128 and 131.

137 IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 90. See also I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic,* Judgment of September 8. 2005. Series C No. 130, para. 141.

138 I/A Court H.R., Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55.

139 Along these lines, it has indicated that "States are obligated to respect and ensure the full and free exercise of rights and freedoms without any discrimination. Non-compliance by the State with the general obligation to respect and ensure human rights, owing to any discriminatory treatment, gives rise to its international responsibility." See I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 85.

140 I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008. Series C No. 182, para. 209; *Case of Rosendo Cantú v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 216, para. 103; *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215, para. 199.

the states have the obligation to: (i) refrain from introducing regulations that are discriminatory or have discriminatory effects on different groups of the population, (ii) do away with discriminatory regulations, (iii) fight discriminatory practices, and (iv) establish rules and adopt the measures necessary for recognizing and ensuring effective equality of all persons before the law.[141]

143. The Inter-American Court has also established that the American Convention does not prohibit all distinctions in treatment.[142] The Court has noted the difference between "distinctions" and "discriminations," in that the first constitute differences compatible with the American Convention as they are reasonable and objective, while the second constitute arbitrary differences that redound to the detriment of human rights.[143] The Court has also established in several judgments the duty of states to consider the situation certain social sectors face of particular risk of human rights violations.[144]

The General Obligation Not to Discriminate: Article 1(1)of the American Convention

144. On discrimination against women, the Court has issued a series of recent pronouncements on this human rights problem.

145. In its judgment in the case of *González et al. ("Cotton Field")* against Mexico, mentioned above, the Court also found a violation of the general obligation of non-discrimination set forth at Article 1(1) of the American Convention.[145] The Court concluded that that the comments made by public officials to the family members when they reported the disappearance of the three victims, inferring that they had gone off with their boyfriends or that they were absent-minded ("*voladas*") and the use of questions regarding their sexual preferences constituted stereotypes and a form of discrimination, which impeded a diligent investigation of the facts.[146] The Court also considered that both the attitude and the pronouncements of the officials revealed that at the very least they were indifferent to the victims' next-of-kin and their reports.[147]

146. In addition, in the judgments of *Inés Fernández-Ortega* and *Valentina Rosendo Cantú* against Mexico, discussed above, the Court affirmed the general obligation to respect and ensure the rights under Article 1(1) of the American Convention, and interpreted it in light of factors that

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141 I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic,* Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 8, 2005. Series C No. 130, para. 141; and I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 88, cited in I/A Court H.R., *Case of López Álvarez*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 1, 2006. Series C No. 141, para. 170; see also *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 44; and *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54, cited in I/A Court H.R*., Case of Yatama v. Nicaragua.* Preliminary Objections, Merits, Reparations, and Costs, Judgment of June 23, 2005. Series C No. 127, para. 185.

142 I/A Court H.R., *Case of Castañeda Gutman v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008. Series C No. 184, para. 211, citing *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 56; *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46; and *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 89.

143 I/A Court H.R., *Case of Castañeda Gutman v. Mexico.* Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008. Series C No. 184, para. 211 citing *Juridical Condition and Rights of the Undocumented Migrants, supra* nota 68, para. 84.

144 See, for example, I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007. Series C No. 172, para. 103; I/A Court H.R., *Case of Yatama, Judgment of June 23, 2005.* Series C No. 127, para. 202; I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 89; I/A Court H.R. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46.

145 I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, paras. 201, 408.

146 I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205. paras. 201, 408.

147 I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico* Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009. Series C No. 205, para. 400.

expose the indigenous population – and in particular indigenous women – to a greater risk of human rights violations *vis-à-vis* the justice system and the health system.[148] The Court referred to particular obstacles that indigenous women face when it comes to gaining access to justice such as speaking a different language and not having access to interpreters, and having insufficient economic resources to hire a lawyer, among others.[149] This problem in particular produces distrust in the justice system and other public mechanisms of protection.[150] For indigenous women, the Court considers that these barriers are particularly serious given that they face the rejection and ostracism of their communities when they report crimes with gender-specific causes.

Discrimination against Women and their Reproductive Rights

147. The IACHR also highlights two judgments of the Court that include analysis relevant to discrimination against women and their reproductive rights. In its recent judgment in the case of *Kákmok Kásek* against Paraguay, related to the failure of the State to ensure the right to ancestral property of the Kákmok *Kásek* indigenous community in Paraguay, the Court emphasized that extreme poverty and lack of adequate care for pregnant women or women who have recently given birth result in high mortality. The Court reasoned that this requires the states to adopt health policies to prevent maternal mortality given that women need special measures of protection. On this point, the Court found that the State violated the right to life established in Article 4(1) of the American Convention, in relation to Article 1(1) of the Convention, for not adopting positive measures to prevent violations of the right to life.[151]

148. In its recent judgment in *Gelman v. Uruguay*[152], of February 24, 2011, the Court also decided on a case in which it was alleged that María Claudia García Iruretagovena de Gelman had been forcibly disappeared in late 1976; she was detained in Buenos Aires, while in an advanced stage of pregnancy. The Court characterized the acts committed against María Claudia García as a grave and reproachable form of violence against women perpetrated by Argentine and Uruguayan state agents that gravely affected her personal integrity and that were clearly based on her gender.[153]

3. Thematic Reports

149. The IACHR has also provided important analysis on the principles of equality and non-discrimination and their importance for women's rights in its thematic reports. Following are some examples of the premises put forth in those reports.

150. In its report on *Access to Maternal Health Services from a Human Rights Perspective*, the IACHR emphasizes how protection of women's right to personal integrity in the area of maternal health implies the states' obligation to guarantee, by legislative provisions or otherwise, that women enjoy the right at the highest possible level of physical and mental health without

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148 I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215. 44, para. 78; I/A Court H.R., *Case of Rosendo Cantú v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 216, para. 185.

149 I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215. 44, para. 78; I/A Court H.R., *Case of Rosendo Cantú v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 216, para. 185.

150 I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico.* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215. 44, para. 78; I/A Court H.R., *Case of Rosendo Cantú v. Mexico,* Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 216, para. 185.

151 *See* I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs, Judgment of August 24, 2010 Series C No. 214, paras. 233-234.

152 See I/A Court H.R., *Case of Gelman v. Uruguay, Merits and Reparations*, Judgment of February 24, 2011 Series C No. 221, para. 1.

153 See I/A Court H.R., *Case of Gelman v. Uruguay, Merits and Reparations*. Judgment of February 24, 2011 Series C No. 221, paras. 97-98.

discrimination.[154] On this particular, the IACHR identifies barriers to access to these services that it characterizes as discriminatory, thus the state has the immediate obligation to address them.[155] For example, certain obstacles perpetuate stereotypes that consider women vulnerable and incapable of making autonomous health decisions. Among other barriers, they list indifference, mistreatment, and discrimination by health sector officials; persistent gender stereotypes in this sector; laws, policies, and practices that require women to obtain the authorization of third persons in order to receive medical care; and the sterilization of women without their consent.

151. The IACHR, in its report on *Access to Justice for Women Victims of Violence in the Americas*[156], reiterates the duty of the states, as part of their obligation to act with the due diligence required, to adopt all appropriate measures, including legislative measures, to amend or abolish laws and regulations in force, or to modify statutory or customary practices that support the persistence or tolerance of violence against women. The IACHR also notes that distinctions based on factors explicitly mentioned in international human rights instruments such as the American Convention, and the statutory categories such as sex and race, are subject to especially strict scrutiny, by virtue of which the states should put forth a particularly important end and very weighty reasons to justify the distinction.[157]

152. Other thematic reports have emphasized important standards on this matter. In its report *Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination*, the IACHR established that affirmative action measures are in full compliance with the principle of non-discrimination and with human rights standards, and may be required to achieve women's substantive equality with men in this sphere.[158] In addition, the IACHR considered that a distinction based on reasonable and objective criteria is in conformity with the instruments of the inter-American human rights system if: (1) it has a legitimate end, and (2) it uses means that are proportional to the end pursued.[159] Therefore, the adoption of special affirmative action measures to promote the real equality of women in political participation must be done in light of these standards.[160]

153. In its report on *Guidelines for preparation of progress indicators in the area of economic, social and cultural rights*, the IACHR also recognized that the first obligation with immediate effect derived from economic, social, and cultural rights is to ensure that they will be exercised in conditions of equality and without discrimination, barring arbitrary differences in treatment based on factors expressly prohibited in the Protocol.[161] In adopting social policies and measures to guarantee this framework of rights, the states should identify sectors traditionally discriminated against when it comes to accessing certain rights, such as women, indigenous peoples, and Afrodescendants and "in implementing its social policies and services, establish special or differential measures to uphold and ensure the rights of those sectors."[162]

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154 IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 26.

155 IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, paras. 36-38.

156 IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 71.

157 IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 80.

158 IACHR, *Annual Report 1999*, *Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination*, chapter V.

159 IACHR, *Annual Report 1999*, *Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination*, chapter V.

160 IACHR, *Annual Report 1999*, *Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination*, chapter V.

161 IACHR, *Guidelines for preparation of progress indicators in the area of economic, social and cultural rights*, OEA/Ser.L/V/II.132 Doc. 14, July 19, 2008, para. 48.

162 IACHR, *Guidelines for preparation of progress indicators in the area of economic, social and cultural rights*, OEA/Ser.L/V/II.132, July 19, 2008, paras. 53, 55.

4. Country Reports

154. The IACHR has also continued its analysis of the principles of equality and non-discrimination, and their application to the rights of women in its country reports.

155. The IACHR, in its report on Colombia (1999), established that: "The principles of equality and non-discrimination are essential to democratic government under the rule of law and a fundamental condition for the full observance of human rights."[163] It also noted that gender discrimination in Colombia subsists, as can be seen in areas such as the workplace, education, and participation in public affairs; and that this problem gives rise to a series of obligations on the part of the State to act diligently to eradicate it.[164]

156. In addition, in its reports on Peru (2000) and Paraguay (2001), the Commission found: "The promotion and protection of women's rights is very much related to the question of discrimination against women in the enjoyment of human rights. While gender discrimination persists, women cannot fully enjoy their human rights. For this reason, international legislation bases the protection of women's rights mainly on the principle of non-discrimination and on the principle of the equality of men and women."[165]

157. The IACHR has also put forth these principles in its country reports on Guatemala, where it has made special mention of how "Long-entrenched forms of discrimination have denied Guatemalan women their right to partake fully of the benefits of national development and participate as equals in decision-making circles. Unable to exercise their economic and labor rights to the fullest, women continue to be under-represented on almost all fronts. Guatemalan women are disproportionately poorer than Guatemalan men and have less access to education and health care, with the result that maternal mortality and malnutrition are high. Indigenous women and women trapped in extreme poverty endure multiple forms of discrimination and social exclusion…. The priority challenge that Guatemala faces is to close the wide gulf between the commitments it has made and the discrimination that Guatemalan women continue to suffer in their daily lives. If women's fundamental rights are to be ensured, immediate attention must be focused on juridical reform and on improving women's access to justice. Effective measures must be taken that reflect, in practice, the commitments that the State has undertaken."[166]

158. In its report on Haiti (2009), the IACHR expressed – in keeping with its previous pronouncements – that discrimination against women is a widespread and tolerated phenomenon based on stereotyped concepts regarding the inferiority and subordination of women, which remain rooted in the culture. This situation, together with the civil, political, economic, and social consequences of these disadvantages, exposes women to acts of physical, sexual, and psychological abuse in the public and private spheres.[167] In its report on Chile (2009), the Commission also expressed its concern in the face of "the link between Chilean women's unequal status in the family and their limited participation in the country's political life and labor force, caused by the stereotyped notions of their role in society as wives and mothers. Society still expects women to bear the bulk of the responsibility for raising children and homemaking. This limits the options that women have to enter and move up in the work

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163 IACHR, *Third Report on the Human Rights Situation in Colombia* (1999), Chapter XII: The Rights of Women, para. 1.

164 IACHR, *Third Report on the Human Rights Situation in Colombia* (1999), Chapter XII: The Rights of Women, para. 2.

165 IACHR, *Second Report on the Situation of Human Rights in Peru (*2000), Chapter Women's Rights, p. 2; IACHR, *Report on Paraguay* (2001), Chapter VII, p. 4.

166 See, for example, IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118 Doc. 5 rev. 1, December 29, 2003, paras. 268-269.

167 IACHR, *The Right of Women in Haiti to be Free From Violence and Discrimination*, OEA/Ser.L/V/II. Doc. 64, March 10, 2009, Executive Summary.

force and in political life. It also does nothing to contribute to an equitable distribution of responsibility between husband and wife."[168]

159. The IACHR has also described how the problem of discrimination against women is aggravated in the context of an armed conflict, requiring reinforced preventive and protective actions by the state. For example, in its report on *Violence and Discrimination Against Women in the Armed Conflict in Colombia* of 2006, the IACHR discussed how the dynamics of the Colombian armed conflict affect women in particular. Even though both men and women bear the burden of the consequences of the armed conflict, the consequences for each are different, given that Colombian women have suffered situations of discrimination and violence for being women since they were born, and the armed conflict is in addition to this history that they have experienced.[169] The IACHR also held that in keeping with the provisions of the Convention of Belém do Pará, at Article 9, the State should act with due diligence in the face of violent acts, and especially take into account the particular exposure to violence and discriminatory acts that a woman may suffer due to her status as a minor, among other conditions of risk. The IACHR held that this provision is in response to the fact that discrimination, in its different manifestations, does not always affect all women to the same extent: there are women who are exposed to an even greater extent to the impairment of their right and to acts of violence and discrimination.[170]

160. The IACHR has also addressed the link among discrimination, violence, and the reproductive rights of women. In its report on Peru of 2000, the IACHR held: "The Commission considers that when a family planning program ceases to be voluntary and turns women into a mere object of control so as to make adjustments to population growth, it loses its *raison d'etre* and instead poses a danger of violence and direct discrimination against women."[171] In relation to the situation in Guatemala, the IACHR indicated in 2001: "The ability of women to control their fertility has a fundamental bearing on her ability to enjoy a range of basic rights, most especially to protect her physical integrity, and plan her family life with her partner."[172]

B. Analysis of judgments that apply the standards of the inter-American human rights system

161. The excerpts presented in this section analyze discrimination against women in the following spheres: (a) labor rights; (b) economic, social and cultural rights; (c) reproductive rights; (d) sexual rights; (e) political rights; (f) the family sphere; and (g) media.

Labor Rights

- Dismissal on the Grounds of Pregnancy: Constitutional Judgment 0771/2010-R, Sucre, August 2, 2010, Bolivia.

162. The Bolivian State presented, along with its questionnaire, this decision on a constitutional *amparo* action brought by C.V.I., arguing the impairment of her rights to life, health, security, work and labor stability, fair remuneration, and social security, citing several provisions of the

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168 IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134 Doc. 63, March 27, 2009, para. 11.

169 IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 45.

170 IACHR, *The Right of Women in Haiti to be Free From Violence and Discrimination*, para. 90; *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 140.

171 IACHR, *Second Report on the Situation of Human Rights in Peru* (2000), para. 26.

172 IACHR, *Fifth Report on the Situation of Human Rights in Guatemala* (2001), para. 34.

Constitution and domestic law. The *amparo* petitioner argued that when she was pregnant and still had three successive labor contracts, she was removed from her source of employment and was not reinstated despite her requests for reinstatement. The Constitutional Court granted the constitutional protection sought, making reference to the American Convention as part of the legal framework for protecting the rights of pregnant women in the workplace:

> As this motion, now an action, was presented to and resolved by the constitutional *amparo* court in force under the Fundamental Law that was repealed, one should determine, before analyzing the ruling that comes to us on review, what constitutional provision will apply. In this regard, according to the arguments developed in SC 0006/2010-R of April 6, based on the principle of *pro homine*, contained in Article 5 of the International Covenant on Civil and Political Rights (ICCPR); Article 29 of the American Convention on Human Rights, and Articles 13(IV) and 256 of the Constitution in force, the trier should apply those provisions that are most favorable to the person, her liberty and rights, and interpret those provisions more broadly. Similarly, according to the principle of progressive interpretation of the provision, among several possible understandings, one should opt for the one that least limits the right or guarantee alleged to have been violated; that is, one should choose the broadest interpretation in terms of recognition of rights and a narrower interpretation when limits are placed on their exercise.
>
> Now, one should consider that at present the protection for pregnant women provided for in the Constitution, guaranteeing that women who are pregnant and expectant fathers may not be dismissed until the child is one year old, according to Article 48(VI).
>
> According to that provision, one can clearly identify two guarantees that tend to make effective protection for the family as the fundamental nucleus of society and the State's obligation to guarantee the social and economic conditions necessary for its integral development (Article 62 of the Constitution). First, women may not be discriminated against or dismissed on grounds of pregnancy or number of children, which presupposes that in those cases one shall consider this guarantee violated when the employer, despite knowing that a working woman is pregnant, dismisses her in an act of discrimination. Second, the prohibition on dismissing pregnant women and the fathers until the child turns one; this guarantee is not subject to certain conditions or requirements that must be met by the woman or man, and, therefore, its exercise does not require prior notice to the employer of the state or pregnancy or of the existence of a child under one year of age.
>
> In view of the foregoing, one finds that the authority bringing the action violated the moving party's right to fair remuneration and the guarantee against dismissal of pregnant women, provided for at Article 48(VI) of the Constitution, which undoubtedly also has repercussions for the right to social security."

- *Dismissal on the Grounds of Pregnancy: Constitutional Court of Peru, R.B.G.V., Amparo Proceeding, Case No. 05652-2007-PA/TC, Peru*[173].

163. In that resolution[174] the Sociedad de Beneficiencia de Lima Metropolitana (social works agency of Metropolitan Lima) is ordered to reinstate Ms. R.B.G.V., who was dismissed because she was pregnant, to her position as a worker. The State notes that in the judgment "the Constitutional Court describes all the conventions to which Peru is party and that protect women's rights, the measures that the Peruvian State has taken to eradicate discrimination against women, the

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[173] The State of Peru presented, along with its response to the questionnaire, a series of judicial resolutions issued in the last 10 years by various courts putting forth the principle of non-discrimination. This section includes two examples of judgments that apply the standards of the inter-American system and their resolution for dismissals and one separation due to pregnancy in the labor and educational realms.

[174] This judgment was also presented by the organization PROMSEX in its response to the questionnaire from the IACHR.

parameters of labor discrimination, and why dismissal because of pregnancy is considered discrimination."

164. The Constitutional Court found the *amparo* action well-founded and ordered the reinstatement of the victim as a worker in the position she held, or in another of similar level or category, within five days, making reference to the principles of equality and non-discrimination enshrined in inter-American and international instruments, in the following terms:

> "1. Equality of rights between men and women is a principle of the United Nations. Thus, the preamble of the United Nations Charter establishes, among other basic objectives, 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women….' In addition, Article 1 of the Charter proclaims that one of the purposes of the United Nations is to carry out international cooperation in developing and encouraging respect for the human rights and fundamental freedoms of all persons 'without distinction as to race, sex, language, or religion….'
>
> 3. Similarly, Article 1 of the American Convention on Human Rights, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 3 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights establish that the rights enounced in them are applicable to all persons without any distinction whatsoever based on race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
>
> 9. In the case of women, the prohibition on discrimination on grounds of sex is based on the need to end the historical situation of inferiority of women in social, political, and legal life. In this sense, labor discrimination on grounds of sex includes not only pejorative forms of treatment based directly on sex, but also other treatment based on circumstances that have a direct connection to sex. Such is the case of pregnancy, a differential element or factor which, for obvious reasons, impacts exclusively on women. Decisions to terminate employment based on pregnancy, as they affect women only, constitute, no doubt, sex-based discrimination.
>
> 20. Mindful of the foregoing, one can conclude that not all unequal treatment before the law is constitutionally prohibited discrimination, for it does not suffice for the provision to establish an inequality, but it must not be objectively justified. In this regard the Inter-American Court of Human Rights has indicated that "not all differences in legal treatment are discriminatory as such, for not all differences in treatment are in themselves offensive to human dignity."
>
> 30. When the expression 'women's human rights' is used, reference is being made, in an enunciative manner, to the human rights recognized expressly in those international instruments that specifically treat the rights associated with the condition of women, which do not exclude the enjoyment and exercise of all other human rights recognized in the Constitution."

Economic, Social, and Cultural Rights

- *Economic, Social and Cultural Rights and Health: Constitutional Court, Constitutional Motion, Judgment of August 6, 2010, Chile.*

165. This judgment addresses a constitutional motion against Law No. 18,933 that establishes a "new regime for determining the price of health contracts and the possibility of their being reviewed by Isapres [health insurance institutions known as Instituciones de Salud Previsional]." Citing international precedent, the court determined that sections 1, 2, 3, and 4 of

the third part of Article 38 of Law 18,933 are contrary to equality before the law, as they establish arbitrary differences

> "… on not instituting suitable, necessary, proportionate, and, therefore, reasonable limits with respect to the exercise of the discretional power that the provision of law gives the Superintendency in question to determine, through 'instructions of general application,' the age limits, within the structure of the tables of factors which, in turn, should be used by the Isapres for drawing up the health plans they offer their affiliates, and to determine how the increase or reduction of the factor will influence the variation in price of such contracts that corresponds to a beneficiary of the respective plan based on age."

166. Several organizations and experts on the topic had presented arguments noting how the increase in the plans' prices that is to be implemented involves the right to equality and non-discrimination, and how that system discriminates arbitrarily against women in a continuing manner. It was argued that said legal provision violated the principles of the CEDAW, the American Convention, and the International Covenant on Economic, Social and Cultural Rights.

167. Following are excerpts of the judgment:

> "That the United Nations High Commissioner for Human Rights has characterized the concepts of discrimination de jure and de facto, as well as direct or indirect discrimination, as 'key concepts in relation to discrimination and equality,' noting that 'direct discrimination is defined as a difference in treatment that consists explicitly of distinctions based on sex or on one of the recognized categories of discrimination.' 'Indirect discrimination occurs when a law, policy, or program that appears to be neutral (for example as regards men and women) has a discriminatory effect at the moment it is implemented. In that case, the final result or effect provokes a situation of disadvantage for women with respect to men, due to the existing inequalities not addressed by a supposedly neutral measure." (United Nations, Economic and Social Council: Report of the United Nations High Commissioner on Human Rights, New York, June 6, 2008, pp. 10-11). From all the foregoing, it is clear that equality of rights as between men and women is a standard category in domestic and international legislation, depending on the degree of equality of women's rights with respect to men's rights. In other words, impeding, the detriment or disadvantage to women in relation to men in the formulation and enjoyment of rights;
>
> … That legal equality between men and women has very concrete expressions in the enjoyment of social rights, the right to health, and, specifically, as regards health benefits, including what are known as health insurance plans…. Health insurance that operates in this sphere has as its purpose to ensure access to health benefits. Accordingly, disproportionate prices in relation to incomes, determined based on factors such as sex and age, both inherent to the human condition, affect the free and equal access to the health actions that the State is bound to guarantee….
>
> Moreover, that mechanism underscores a discrimination against women, older adults, and children under two years of age that has not rational justification, and, therefore, is not in accord with the Constitution…. Nothing stands in the way of questioning and reviewing the reasonableness and justice of said table of factors, at the same time as determining whether, on drawing up and applying said table, an administrative power has been exercised rationally, and whether it has or has not resulted in a situation that entails arbitrary or manifestly abusive or disproportionate discrimination for the contracting party in view of the very nature of social security health insurance as a standard term contract."

- *Separation Due to Pregnancy: First Specialized Civil Chamber of Piura, Case 007-1656-0-2001-JR-CI-2, Amparo*

168. According to the State, this resolution affirms the decision at trial that declared the action brought by M.E.A.S. and L.M.C.M., in representation of their daughter M.P.A.C., to be well-founded. It was argued that the victim was separated definitively from the Superior Technical School of the National Police of Peru in her capacity as a student because she was pregnant. Based on the principle of equality and non-discrimination, found in both domestic and international instruments ratified by the State of Peru, the victim's reinstatement was ordered "at the same level of academic training in which she was a student when the violation took place."

169. The Chamber also ruled in the following terms on the principle of equality and non-discrimination:

> "The fundamental right to equality includes non-discrimination on the basis of sex, as expressly recognized by Article 2(2) of the Constitution and in the human rights treaties ratified by and therefore binding on Peru, including Article 24 of the American Convention on Human Rights and Article 26 of the International Covenant on Civil and Political Rights, which provide in similar terms that all persons are equal before the law. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states at Article 1 that discrimination occurs not only intentionally but may also be the result of a certain action, even when that has not been its objective;
>
> **FIFTH** – The discrimination in the instant case turns on the procreation of a child, and as it is women who become pregnant, it turns out that they are the main victims in the face of such provisions and acts, and it is they who will be affected by the definitive separation from the School of Non-Commissioned Officers of the PNP, yet this will not happen with men to procreate, for the simple fact that this situation is not always evident, for one must investigate, rather than it being apparent based on mere appearance or physical condition, as in the case of women;
>
> **SIXTH –** One must bear in mind that maternity does not cause chronic physical harm or diminish the intellectual quotient, nor does it take away the abilities to learn to handle a weapon or see to the country's internal order, and therefore has no foundation or objective basis whatsoever. Therefore, it is inconsistent for a state under the rule of law such as ours that proclaims in its Constitution the right to and defense of life, for some institutions such as the respondent here to condemn a woman because of her pregnancy as though it were something degrading, to punish it with expulsion, stigmatizing her, instead of according her special treatment in view of her situation, for the physical tests that pregnant women must give during the periods of physical training should be postponed until they have regained their normal physical condition, which is reasonable, thus we consider that the condition of being pregnant is never cause for discriminatory treatment nor does it impede one from receiving police or military training. It should be noted, moreover, that the consequences of the expulsion of the cadet translate into a violation of her right to equality, because she is being impeded, unlike persons who are not pregnant, from attaining or pursuing legitimate life aspirations, such as becoming a non-commissioned officer in the National Police of Peru, or freely choosing the options and circumstances that allow for her realization as a person….
>
> In view of the foregoing, on removing plaintiff M.P.A.C. definitively from the Escuela Técnica Superior PNP La Unión, not only has her right to equal educational opportunities been violated, but also the right to equality for attaining and crystallizing the 'life project' that she wants for herself; as well as her right to integral development as a person, which is inadmissible in a democratic society that claims to protect human dignity…."

Reproductive Rights

- *Social Coverage of Assisted Fertilization: Superior Court of Justice of Corrientes, B.N.L. and L.F.A. v. Obra Social (Social Services Agency) of the Province of Corrientes, March 16, 2011, Argentina.*

170. This judgment addresses a case in which a couple asked their social services agency for "comprehensive and total coverage" ("*cobertura integral y total*") of the expenditures of the assisted fertilization treatment by the technique known as ICSI (intra-cytoplasmic sperm injection); the request was denied. The moving parties consider that this denial violated a series of rights and guarantees recognized by the National Constitution and international human rights treaties, among other federal and local provisions. The Court of Appeals for labor matters considered that the issue in controversy was debatable, and, therefore, required a broad debate and evidence that is beyond "the delimited cognitive framework" that allows one to turn to the *amparo* jurisdiction, which resulted in the rejection of the moving parties' claims. The Superior Court of Justice of Corrientes, on the other hand, understood that it was the appropriate jurisdiction, reasoning, among other considerations, that the denial of this procedure – involving medical evidence they needed – violates the principle of equality enshrined in various regional and international human rights instruments:

> "as the judgment ignores relevant evidence produced during the proceeding and violating the constitutional and supra-statutory rights of those who wish to be parents and form their family, which can perfectly well be repaired through the *amparo*, this case does not require a major debate and evidence to decide it, as the record suffices….
>
> … the Court of Appeals set aside relevant and clear and convincing evidence produced not only by the persons bringing the *amparo* action but also by the I.O.S.COR. through the reports of its medical authorities and specialists, who advised fertility treatment beyond not finding it included in the menu of benefits. And this was the key issue in the controversy….
>
> … the persons bringing the *amparo* actions obtained from the I.O.S.COR a refusal in the face of the silence evidenced, and the use of the means chosen is, in this case, the most suitable for the effective protection of the right to life, health, and psychological and physical integrity of the petitioners…. And while in our province it has not been regulated … one cannot ignore the advances and political will in the country, every more accentuated, to achieve its legislative recognition….
>
> … infertility is considered an illness, in this case the right to health is compromised, and the process of urgent protection chosen is appropriate.... The *amparo* action brought by a couple for their social services agency to cover the total cost of the assisted fertilization treatment – in this case by the technique known as ISCI – is in order if a showing was made of their inability to conceive, and of the suitability of said medical procedure, notwithstanding that it is not included in the Obligatory Medical Program, given that it is merely a minimum benefits package that may be expanded in the case of those whose right to health or life is compromised….
>
> The denial of access to assisted fertilization techniques when these are indispensable for conceiving a child expressly violates the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention of Belém do Pará, and would be contrary to the principle of equality set forth in our National Constitution, since it discriminates unfairly against women who have difficulties procreating in relation to those who do not suffer such difficulties…. The solution, to the contrary, would entail prioritizing a mere commercial interest over the human rights to life, health – reproductive and the right to procreate – an acquired right to a better quality of life, right to physical integrity, self-determination, and the right to equality, protected constitutionally and by international instruments."

- *Regulation of the Practice of Abortion: Judgment C-355/2006, Constitutional Court, Colombia.*

171. This judgment – presented by the State of Colombia in its response to the questionnaire - addresses a constitutional motion presented against the provisions of the Criminal Code of Colombia that categorically prohibited the practice of abortion in the country. The action was filed by the plaintiff, who argued that those provisions violated the right to equality, to reproductive autonomy, and to the free development of the personality, to equality and self-determination; the rights to life, health, and integrity; the right to be free from cruel inhuman, and degrading treatment; and the obligations under international human rights law; all rights enshrined in the Constitution. On May 10, 2006, the Constitutional Court announced its decision, ruling that abortion could not continue being considered a crime in three circumstances: (a) when the life or health (physical or mental) of the woman is in danger; (b) when the pregnancy results from rape or incest; and (c) when there is a serious fetal deformation that makes life outside of the uterus unviable.

172. The Constitutional Court made extensive reference in this judgment to inter-American and international human rights law precedent – including the American Convention and the Convention of Belém do Pará – considering that the absolute prohibition on abortion to protect the interests of the fetus imposed a disproportionate burden on the exercise of women's human rights. The Court also emphasized the link between preventing sexual violence against women and undesired pregnancy, which entails positive obligations on the State to mitigate the effects of sexual violence, offering the necessary health services.

173. Following are some excerpts from the judgment:

> 7. The fundamental rights of women in the Colombian Constitution and international law
>
> "The Colombian Constitution of 1991 made an all-important change in relation to the position and rights of women in Colombia society and in their relations with the State….
>
> Along these lines, the 1991 Constitution made clear its interest in recognizing and lifting up the rights of women and in strengthening the safeguarding of these rights, protecting them effectively and in a reinforced manner. Consequently, nowadays women enjoy special protection in the Constitution, and to that extent all their rights should be looked after by the authorities, including judicial officers, without exception….
>
> It should be recalled that with respect to women it is clear that there are situations that affect them above all, and differently, such as those that concern their life, and in particular those that concern their rights over their body, their sexuality, and reproduction….
>
> In effect, women's rights have been occupying an important place in world conferences called by the United Nations, which constitute an essential frame of reference for interpreting the rights contained in international treaties….
>
> In effect, different international treaties are the basis for recognizing and protecting the reproductive rights of women, which begin with the protection of other fundamental rights, such as the rights to life, health, equality and non-discrimination, liberty, personal integrity, and being free from violence, which constitute the essential core of reproductive rights. Other rights are also directly affected when the reproductive rights of women are violated, such as the right to work and to education, which, on being fundamental rights, may serve as a parameter for protecting and guaranteeing their sexual and reproductive rights….
>
> It should be recalled that in addition to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the American Convention on Human Rights, protection of the

> rights of Latin American women finds special support in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which entered into force for Colombia as of February 19, 1982, by Law 51 of 1981, and the Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," which came into force for Colombia on December 15, 1996, with the adoption of Law 248 of 1995; these, together with the documents signed by the governments of the signatory countries in the World Conferences, are fundamental for protecting and guaranteeing the rights of women insofar as they constitute a frame of reference on establishing concepts that help interpret them in the international and domestic spheres….
>
> In effect, the various forms of gender violence constitute a violation of women's reproductive rights, as they have repercussions for their health and sexual and reproductive autonomy. Sexual violence violates the reproductive rights of women, in particular their rights to bodily integrity and to the control of their sexuality and reproductive capacity, and places at risk the right to health, not only physical but also psychological, reproductive, and sexual….
>
> Accordingly, the CEDAW Committee has declared: "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." The Convention of Belém do Pará, in force since March 5, 1995 and for Colombia since December 15, 1996 – Law 248 of 1995 – is one of the most important instruments for the protection of women's rights in the face of the various forms of violence to which they are subjected in the various spaces of their lives. This has determined two elements that make it especially effective: the definition of violence against women, which considers these acts as violations of human rights and fundamental freedoms, taking into account the abuses that occur both in public and in private; and the establishment of state responsibility for violence perpetrated or tolerated by it, wherever it may occur…."

- *Reproductive Rights: Constitutional motion 146/2007 and its joined motion 147/2007, Supreme Court of Justice of the Nation, Mexico*[175].

174. The State of Mexico presented information regarding this judgment in its response to the questionnaire. This judgment is related to the regulation of the legal interruption of pregnancy before twelve weeks of gestation in the Federal District. The Legislative Assembly of the Federal District approved the decriminalization of the voluntary interruption of pregnancy within the first twelve weeks of gestation in the Federal District on April 26, 2007. Such reform was challenged by the President of the National Commission of Human Rights and the Federal Executive Branch - by means of the Attorney General of the Republic - on May 24 and 25 of 2007 respectively, before the Supreme Court of Justice of the Nation. Motions of constitutionality were presented, which were later accumulated. The Supreme Court resolved constitutional motion 146/2007, and its joined motion 147/2007 on August 28 of 2008, ruling that the reforms approved by the Legislative Assembly of the Federal District were constitutional.

175. In this respect, the Commission notes the arguments put forth by the Supreme Court of Justice in terms of the content of the right to life under Mexican legislation and international treaties.[176] In particular, the IACHR mentions the argument put forth by that Court in terms of the "content

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[175] The State of Mexico submitted, along with its response, a list identifying 26 decisions handed down by the Supreme Court of the Nation related to the issues of: (i) reproductive rights; (ii) gender equity; (iii) indigenous women; (iv) violence against women; (v) sexual rights; (vi) right to health; (vii) gender equity in political participation; (viii) equality and non-discrimination; and (ix) violence between spouses. In this section, the IACHR highlights two particularly important judgments, given that they are historic for Mexico for reproductive and sexual rights; and a third one on women's political rights.
The IACHR also notes that it has received information on judgments handed down by courts in Mexico associated with the issues discussed in this report by the organization GIRE and from Miguel Angel Antemate Mendoza, a graduate student at the Universidad Autónoma de México.

[176] Specifically, the Court analyzed, within the "concepts of invalidity" raised by the moving parties, whether "in effect the [Mexican] constitution recognizes or does not recognize a right to life, and if so, what its normative bases would be."

of the applicable international instruments, such as the case of … Article 4 of the American Convention, to determine in what sense its content refers to the existence of a right to life and what would be the conditions for its application." On this point, the Court took into account the antecedents that led to the drafting of the Convention in the following terms:

> "… as the American Convention on Human Rights is the only international treaty that sets forth a specific moment for beginning protection of the right to life, and as the Mexican State is a party to it, it is worth analyzing the intent of those who adopted that international instrument to determine whether one might derive from it an absolute right to life or special obligations for the protection of that right from a specific moment."

176. Thus, after analyzing the content of the *travaux preparatoires* of the American Convention with respect to the wording of said Article 4, the Court indicated that:

> "… the only thing that we can find in the Constitution expressly are constitutional provisions that positively establish obligations for the State to promote and make normatively effective rights related to life…. In other words, the Constitution does not recognize a right to life normatively, but establishes that once given the condition for life there is a positive obligation on the State to promote it and develop conditions for all individuals subject to the provisions of the Constitution to increase its level of enjoyment and to procure what is materially necessary for it.
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> …
>
> In this context, this case brings us face-to-face with a peculiar problem, in which one must pose a question inverse to that raised by the courts or constitutional courts in the examples noted above: we must ask ourselves whether the State is obligated or has a mandate to criminalize a specific conduct, and not whether criminalization of a particular conduct impairs or violates constitutional rights.
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> …
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> The Mexican State, from the international sphere, has undertaken to punish certain conduct, as in the case of the …, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 'Convention of Belém do Pará,' which establishes at its Article 7(c) the commitment of the states parties to: 'include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary'(78)."

177. Mindful of the foregoing considerations, the Court concluded that:

> "… if based on what has been argued it turns out that life, as a constitutionally and internationally protected interest, cannot constitute a precondition of all other rights, in addition to the fact that even as a right it would at no moment be considered absolute; that its specific expressions domestically and internationally refer to the arbitrary deprivation of life and the prohibition on re-establishing the death penalty; that it is a problem of decriminalizing a specific conduct and that there is no specific constitutional mandate for its criminalization; and, finally, that the evaluation of the social conditions and weighing done by the Legislative Assembly of the Federal District is constitutional and is within its powers in keeping with democratic principles, this court sitting *en banc* considers that the arguments

analyzed in this section in relation to the nature and existence of the right to life are unfounded."[177]

Sexual Rights

- *Homosexual Couples and the Right to Equality and Non-discrimination: Federal Supreme Court, Judgment of May 5, 2011, Brazil.*

178. The Federal Supreme Court of Brazil, last May 5, 2011, unanimously recognized that homosexual couples have the same rights as heterosexual couples in a historic judgment for Brazil. The decision also granted homosexual couples most of the rights that heterosexual couples enjoy, including pension and inheritance benefits, among others. In its judgment, the Court makes a detailed analysis of the right to equality and non-discrimination, among other fundamental rights. Following is a transcription of some passages from the judgment:

> "The principle of equality establishes that all persons should be treated by the State with the same respect and consideration. To treat all with the same respect and consideration, is equivalent to recognizing that all persons possess the same right to formulate or to pursue with autonomy their life plans, and to search for the realization of their existence, while this does not imply a violation of the right of third persons.
>
> The truth is that equality impedes that the members of a group are denied the possibility of enjoyment of a right, by reason of prejudice linked to their mode of living. It is exactly that what happens with the infra-constitutional Brazilian law, which does not recognize unions between persons of the same sex, treating unequally homosexuals and heterosexuals".

179. In the vote by Justice Marco Aurélio, mention is made of the right of homosexual couples to form a life plan, based on the case-law of the Inter-American Court of Human Rights:

> Each person is responsible for formulating the schools of life that will lead him or her to the full development of his or her personality. The Inter-American Court of Human Rights has recognized the legal protection granted to the life plan (v. Loayza Tamayo vs. Perú, Cantoral Benavides vs. Perú), which indisputably forms part of the existential content of the dignity of the human person. Antonio Augusto Cancado Trindade has pronounced regarding this point in the case of Gutierrez Soler vs. Colombia, decided on September 12 of 2005:
>
> We all live in a time that ends up consuming us. Precisely for living within this time, each person seeks to design his or her own life plan. The term plan contains a temporal dimension. The life plan, then, has an existential value, tending to the idea of the development of the personality. That said, in the temporary transit of life, each should proceed with the options that seem correct to them, in the exercise of their personal liberty, to reach the realization of all ideals. The search of the realization of the life plan reveals a high existential value, capable of giving sense to the life of each one…..
>
> The State exists to support individuals in the realization of their personal life plans, which translate into the free and full development of the personality. The Supreme Court has already established in several occasions that the scope of dignity covers material offerings,

[177] According to the final decision handed down by the court, the constitutional motion presented was found to be "partially founded and unfounded" and ordered that it be dismissed with respect to Article 148 of the Criminal Code for the Federal District and Article 16 bis(7) of the Law on Health for the Federal District, and the third transitory articles of the right challenged of reforms to those precepts. In addition, the validity of Articles 144, 145, 146, and 147 of the Criminal Code for the Federal District was upheld, along with Articles 16 bis(6), third paragraph, and 16 bis(8), last paragraph of the Law on Health for the Federal District.

recognizing public obligations in the matter of medications and day cares, but it cannot be forgotten the existential dimension of the principle of the dignity of the human person, since a dignified life is not limited to the physical integrity and to the financial autonomy. The dignity of life requires the possibility of concretizing goals and projects. From that premise, the issue of existential harm arises when the State restricts the citizens in this aspect. It is worthy to be said: that the State is obligated to guarantee that individuals search for their own happiness, as long as they do not violate the rights of others, which does not occur in the present case.

It is true that the life project of those attracted by the same sex would be harmed with the absolute impossibility of creating a family. To expect from them a change of sexual orientation so that they are capable of reaching that legal situation shows a lack of appreciation of dignity. It is also faced with the constitutional objection to prejudice by reason of sexual orientation.

- *Marriage between Persons of the Same Sex: Constitutional motion 2/2010, Supreme Court of Justice of the Nation, Mexico.*

180. According to what is indicated by the State of Mexico in its response to the questionnaire, this decision "recognizes the validity of the redefinition of the institution of marriage so as to include not only heterosexual couples, but also those that are formed between partners of the same sex." This decision refers to a constitutional motion filed by the Attorney General of the Republic in relation to the provisions contained in the reform of Articles 146 and 391 of the Civil Code of the Federal District, published by the Official Gazette of the Federal District of December 29, 2009, by which marriage was allowed between persons of the same sex.

181. In relation to this decision, the IACHR should point out the considerations made by the Court in relation to the principle of equality and non-discrimination in the following terms:

"… this Court has established a test of reinforced control to verify whether a law, on limiting or restricting a given fundamental right or differentiating between two or more acts, occurrences, persons, or communities, respects the principle of equality and non-discrimination.
…
However, this case does not involve such legislative measures but rather, to the contrary, a normative act that expands or extends a civil right, so as to have full equality in the right to judicial protection as between homosexual and heterosexual couples, based, as noted by the justification given by the legislator of the Federal District, on respect for the principle of equality and the prohibition on non-discrimination, specifically in relation to sexual orientation."

182. Mindful of these considerations, in light of the "reinforced control test," the Court indicated:

"As regards the first of the aspects noted – equality between men and women before the law – both the text of Article 4 and the legislative procedure that gave rise to it (amendment published December 31, 1974), one notes that the reform responded to the historical discrimination against women, seeking to eliminate it, so as to achieve equality of men and women before the law, in keeping with the criteria of this Court on equality, it is not a question of trying to accord identical treatment or of prohibiting the establishment of distinctions, but of achieving *real* equality between men and women."

183. In addition, the Court proceeded to analyze the arguments raised by the moving party in relation to the content of international treaties on the institution of marriage. In this respect, the court indicated:

"… the assertion of the petitioner that constitutionally and even according to the international treaties he cites, it is an essential element of the marriage that it be entered into between

> persons of different sex (man and woman), given that, as he says, its essential aim is procreation, and hence the formation of a family – an ideal family – which is that which, to a greater extent, is protected by the Federal Constitution, cannot be admitted by this Court, for as we have explained, nowhere does our Constitution so provide and, moreover, the matrimonial legal relationship has ceased to be linked to the purpose of procreation, as it is based primarily on affective, sexual bonds of identity, solidarity, and mutual commitment of those who wish to lead their lives together.
>
> …
>
> Article 1 of the Mexican Constitution establishes that every individual will enjoy the guarantees provided for by the Constitution, that these cannot be restricted or suspended other than in the cases and conditions that it establishes, and that: "Discrimination based on ethnic or national origin as well as discrimination based on gender, age, disabilities of any kind, social status, health condition, religious opinions, preferences of any kind, civil status or any other reason which is an attack on human dignity and which is aimed at either canceling or limiting the rights and freedoms of individuals shall be prohibited."

- *The Rights to Dignity and Identity: Supreme Court of Justice, Judgment No. 159/05, Uruguay.*

184. One of the judgments presented by the State of Uruguay in its response to the questionnaires has to do with a matter regarding a women who underwent a sex-change operation and asked that her original birth certificate be rectified, in relation to the name and sex, as of the date of the operation, so as to bring the birth certificate into line with the new situation. The Supreme Court of Justice of Uruguay, by majority, authorized what was requested in the judgment in question, invoking several rights, including the right to dignity of each person of the female sex. In the judgment, the Supreme Court invoked both the European Court of Human Rights and its judgment in Goodwin v. United Kingdom of July 11, 2002, and the case-law of the inter-American human rights system, in the following terms:

> "Uruguay ratified the American Convention on Human Rights and the Covenant on Civil and Political Rights of the United Nations, which enshrine the right to dignity of every person, among which is one's own identity.
>
> International provisions provide for the State's obligation to ensure the enjoyment of and respect for the rights enshrined for all persons who are in its territory and subject to its jurisdiction, and commit it to adopting legislative or other measures (judicial and administrative) to uphold the rights recognized in these instruments….
>
> As indicated *supra* (third considering clause), it is considered necessary to suppress, in the operative part of the judgment of first instance, the phrase that reads: "where it says female it should say male," because it may lead to confusion in relation to the moment from which the change in sexual identity becomes operative, or from the moment the sex change surgery has legal effects, such that the effects would be projected from this date and not from birth (*ex nunc*)."

Political Rights

- *Participation in Conditions of Equality*: Court of Criminal Cassation of Cartago, Resolution 028-2002-TC, November 22, 2002, Ecuador[178].

185. This judgment concerns a constitutional motion on the merits against Article 40 of the Regulation of the Law on Elections. The moving parties argue that the article in question violates the political rights of women, in particular in the areas of equitable participation and the right to be elected in equal conditions, not respecting the alternate and sequential participation of women. Their claims are based on international provisions, in particular, Articles 4 and 5 of the Convention of Belém do Pará, and Articles 1 and 23 of the American Convention on Human Rights. The court declared the unconstitutionality on the merits of Article 40 of the Regulation of the General Law on Elections, ruling in the following terms:

> "That the article challenged makes a definition of alternation and sequence, definitions whose content does not guarantee the equitable participation of men and women, particularly when, on referring to sequence, it regulates the way in which the combinations in series are to occur, attacking the equality of conditions on establishing that a woman can be situated on the ballot after two or three men have been placed; … That, in the understanding that the State has assumed the duty to eliminate the conditions of inequality in electoral participation as between men and women, it is necessary to prevent the effects of any provision that detracts from this objective, so they would be unconstitutional; and, to the contrary, it is an obligation of any authority or regular administrative organ, benefiting what are known as affirmative actions…."

- *Quotas and Political Parties: Regional Chamber of the Electoral Court of the Federal Judiciary, corresponding to the Fifth Plurinominal District, Case No. ST-JDC-86/2010, December 10, 2010, Mexico.*

186. This decision concerns the lawsuit brought by a member of the Partido Acción Nacional in the state of México to protect his political-electoral rights. According to the judgment, the plaintiff had been designated a member of the municipal delegation of Cuautitlán Izcalli of this political institution in the state of México, in the regular session held by the plenary of the State Executive Committee of the Partido Acción Nacional in the state of México on June 20, 2010. Subsequently, the Secretary for Organization of that Executive Committee reported that said session had not complied with the "gender equity established in its by-laws, accordingly one could not install the new Municipal Delegation." In view of the foregoing, the plenary of the Executive Committee decided to "set aside" ("*dejar sin efectos*") the designations in the session held and "designate some others to meet the gender quota established in the By-laws." The plaintiff brought a motion for reconsideration against this decision on restructuring, which was resolved by the State Executive Committee of said party, confirming the terms of the decision challenged. Finally, the moving party brought an "action for the protection of [his] political-electoral rights" that was resolved in due course by the Electoral Tribunal indicated.

[178] The State of Ecuador presented several resolutions and judgments, such as this one, adopting by the Constitutional Court related to gender equality and the principle of non-discrimination. In addition, the organization CLADEM-Ecuador presented several judgments associated with the right to gender equality and the principle of non-discrimination.

187. The Commission notes the considerations made by the Electoral Tribunal in terms of the issue of gender quotas established in the legislation of the Partido Acción Nacional in the state of México. In this respect, the Tribunal noted:

> "… it is important to highlight that on the issue of gender quotas, as held by this Regional Chamber in case ST-JDC-295/2009, in the inter-American ambit there is broad agreement that the principle of non-discrimination has become a *jus cogens* provision, i.e. an interpretive norm of international human rights law that does not allow for any provision to the contrary.
>
> As per this right, it is proclaimed, for the Mexican case, in the Constitution of Mexico, but also at Articles 2, 3, 23(4), 24(1), and 26 of the International Covenant on Civil and Political Rights, Article 2 of the International Covenant on Economic, Social and Cultural Rights, Articles 1, 13(5), 17(4), and 24 of the American Convention on Human Rights, Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (Convention of Belém do Pará), Articles 4 and 5 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, that all persons are equal before the law, and one may not establish differences or exclusions based on race, color, sex, language, religion, or political opinion, except those that are objective and reasonable, such as gender quotas.
>
> Along these lines, it is important to establish that even though the Constitution establishes formal equality based on the 1974 reform, discrimination on the basis of gender has been maintained in many social strata, making it necessary to introduce gender quotas whose purpose is to eliminate such historical discrimination. The foregoing considers that discrimination can be established in two ways: first, institutionalized, as was the case of apartheid in South Africa, and second, through the dissemination of discriminatory practices in a society which, as legal doctrine has recognized, cannot be ignored or minimized for the sake of an abstract idea of equality (Ferrajoli Luigi, rights and guarantees, the law of the weakest).
>
> In summary, even though in Mexico the Constitution has explicitly affirmed that men and women are equal before the law since 1974, clearly in fact there are forms of discrimination and inequalities that cannot be ignored or minimized. In electoral matters it is clear that even though Mexican women are the majority in the voter rolls, they are a minority in government jobs, which is combated by gender clauses such as the one before us today, which on allowing for better participation of women in public life not only does not violate the constitutional principle of equality, but is in line with the constitutional provisions that prohibit discrimination and with international treaties, the international case-law, and contemporary legal doctrine.
>
> Therefore, so long as inequalities exist in fact, it is necessary for legislation and the internal regulations of political parties to maintain and operate the premises that uphold the establishment of gender quotas for political parties in order to diminish the pernicious effects of this tradition."[179]

[179] Mindful of the foregoing, the Court determined that the request presented by the person allegedly aggrieved was unfounded since the decision made by the State Executive Committee of that organization, in terms of the "restructuring of the Municipal Delegation to meet the gender quota stipulated by the by-laws of the Partido Acción Nacional," was well-founded. In this regard, the court upheld the resolution of September 23, 2010, on the motion for reconsideration (*recurso de revocación*) by which the agreement approved by the State Executive Committee of the Partido Acción Nacional in the State of Mexico was affirmed.

Family Sphere

- *Discrimination Based on Marriage: Second Civil Court Section I, Judgment 00302, Case 03-001073-0185-Cl, December 1, 2008, Costa Rica.*

188. In this case, the respondent argues that the plaintiff has no right to request compensation for the death of her son based on the following considerations:

> "Throughout this process, the respondent has argued that the plaintiff does not have a right to request compensation for the death of her son, given said compensation was granted through her husband A.C.C., who participated, as civil accuser, in the criminal proceeding for manslaughter (*homicidio culposo*) that took place before the Office of the Prosecutor of Alajuela, under case number 00-202188-305-PE. In that summary proceeding a settlement agreement was reached by which, having recourse to the voluntary insurance policy for vehicles that the respondent had with the National Insurance Institute, the plaintiff's husband was paid the sum of 2.5 million colones.

189. The Court ruled in favor of the plaintiff, considering that the arguments raised by the respondent are sexist and exemplify obstacles that women may face when it comes to accessing justice because of the institution of marriage, making reference to the American Convention, among other human rights instruments:

> "From the moment of answering the complaint, the respondent has made a series of arguments with respect to marriage and its patriarchal vision that is worth outlining. Thus, for example, on answering the action it was indicated "… The parents were never left out of the process, for at every moment Mr. C.C. acted in representation of both. One could not affirm the judge's malicious intent in not mentioning the mother, because it is well known that marriage is a communion of two persons who not only share difficult moments, but also pleasant ones. Along these lines, it was always understood that don A. is appearing in his capacity as father, but it is out of the judge's hands to know whether or not he is a good husband…. Nonetheless, it is clear that even if she were to have spoken in the proceeding, she would have had to do so with her husband, and the result of the compensation would be the same….
>
> These arguments of the respondent, as we will see, embody myths and pre-conceptions about marriage and the participation of the woman in it which, in this case, are used to thwart the plaintiff's right to compensation and, what's worse, to limit her access to justice merely for being a woman bound in a relationship with a man. It is unquestionable that women have suffered much discrimination throughout history, as corroborated by the studies done by the United Nations and national and international institutions (see in this vein the text "Metodología para el análisis del género y del fenómeno legal," in "Derecho y Género", pp. 99-106). Now, discrimination against women is defined in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women as '…any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field….'
>
> Similarly, Article 16(1)(h) id. provides that in marriage women shall have the same rights as their husbands with respect to the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. In addition Article 8(1) of the American Convention on Human Rights and Article 14(1) of the International Covenant on Civil and Political Rights indicate that every person has the right to be heard with due guarantees, including by an independent court. Article 3 of this Covenant

provides that the states party undertake to ensure men and women equal title to enjoy all the economic, social, and cultural rights set forth in that instrument. We should recall that the Constitutional Chamber has determined that the international human rights instruments such as those outlined above trump the provisions of the Constitution, even though such instruments may have been ratified by our country, so long as they grant or guarantee such rights (see in this regard votes 3435-92 and 5759-93).

Despite the existence of these international instruments, it is clear that "sexism" finds expression in our society through myths and mystifications such as those outlined by the respondent in the memorials indicated, that the man is the "head of household" and the one who orders what to do and what not to do, so much so that one must presume that his expression of will in the "public realm" (represented in this case for their participation in the criminal justice process for the death of his child) also encompasses that of the plaintiff here, just because both are united by marriage. This kind of reasoning is no more than a way of rendering the plaintiff "invisible" as a human being capable of exercising rights such as those sought to be claimed here. We should be clear that in the record it has not been shown that Arnoldo Chacón Chacón acted, through an agency contract in representation of the plaintiff in the criminal proceeding, since none of these contracts was shown. The only argument with which the respondent seeks to have one believe that representation in effect occurred, and that because of that through the payment made to him she was also paid, are the patriarchal conceptions that some witnesses express in this proceeding."

- *Discrimination against Divorced Women: Constitutional Court, Case 794-2010, June 1, 2010, Guatemala*[180]*.*

190. The judgment addresses a constitutional motion against Article 89(3) of Decree-Law 106 of the Civil Code of Guatemala. It is argued that the Civil Code presumably contains discriminatory conduct towards divorced women since they are prohibited from contracting marriage freely, unlike divorced men. The provision also establishes that "the passing of 300 days is necessary to avoid problems of filiation, when they may be overcome by means of scientific evidence that does not violate women's rights. This constitutes discriminatory conduct because it is based on a negative perception of women who have divorced, who face constraints on decision-making on their own future. Those negative perceptions have consequences for the treatment of persons considered inferior or discredited, which means that opportunities are suppressed for them, and consequently they are kept or impeded from exercising their rights and realizing their capabilities."

191. The Court declared the partial general unconstitutionality of Article 89(3) of the Civil Code, making reference to the visit by the IACHR to Guatemala in 2003[181] and to its pronouncements on discrimination against women:

"This constitutional action has been filed in order to do away with the discriminatory references contained in the Civil Code. Although this task should be attributed mainly to the legislator, eliminating the discrimination that on grounds of sex persists in the civil legislation, and furthering the normative development of the constitutional principle of equality is also a task of society as a whole, and in which this Constitutional Court must necessarily be involved, because equal opportunity between women and men is considered a basic principle for democracy and human respect.

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[180] The State of Guatemala in its response to the questionnaire reported on judgments – such as this one in particular – in which reference is made to the recommendations made to the country by the inter-American system related to gender equality and the principle of non-discrimination; violence against women; and their economic, social, and cultural rights, among other issues.

[181] For more information on this visit, see IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L./V.II.118 Doc. 5 rev. 1, December 29, 2003.

During the 2003 visit of the Inter-American Commission on Human Rights, it recommended that: *"Effective measures must be taken that reflect, in practice, the commitments that the State has undertaken, such as mainstreaming the gender perspective into all aspects of the policies and decisions adopted by the State, earmarking sufficient resources to make this possible, better* coordinating *policies vis-à-vis women's rights, and holding State agents accountable when they fail to perform the State's obligations in respect of equality and nondiscrimination."* The Commission also indicated that *"while positive reforms in the law have been adopted, such as the Law on the Dignification and Promotion of Women, anachronistic laws that make unfair, gender-based distinctions remain on the law books. The persistence of these discriminatory provisions thwarts the very progress that the new laws are intended to achieve. Many of these anachronistic provisions perpetuate discrimination. The changes that these laws require must be crafted by representatives of civil society and, in some cases, by the architects of State policy."* With respect to the provisions mentioned, the Inter-American Commission on Human Rights expressly mentioned that *"Within the Civil Code, Articles 89 and 299 still create gender-based distinctions that fly in the face of the State's obligations vis-à-vis nondiscrimination and equal protection under the law.*"

This constitutional action has been brought for the purpose of doing away with the discriminatory references contained in the Civil Code. Although this task should mainly be attributed to the legislator, eliminating discrimination on grounds of sex that persists in the civil code legislation and enhancing the normative development of the constitutional principle of equality is also a task of society as a whole, in which this Constitutional Court must necessarily be involved, because equal opportunity as between women and men is considered a basic principle for democracy and human respect.

This Court considers that nowadays filiation is not based on the will of the parties, but on the reality of nature; this has been possible due to the appearance of scientific procedures that make it possible to establish with certainty the reality of the biological bond. One of these technical procedures that is most important in our day, given its scientific rigor, is DNA testing. Such is the importance of this test in cases of paternity that is controverted or not known that the law itself establishes a sanction in the event of a refusal to submit to the exams and analyses consisting of the indication contrary to the position held by the person who refuses to undergo the exam, which clearly constitutes a real legal presumption against him."

Media

- *Discrimination against Women in the Media: First Chamber of the Supreme Court of Justice, Judgment 00198, Case 06-000100-0163-CA, April 2, 2010, Costa Rica.*

192. This judgment addresses the authority of the Institute on Alcoholism and Drug Addiction (IAFA: Instituto sobre Alcoholismo y Farmacodependencia) to restrict the use of the women's images in advertising for an alcoholic beverage, namely Pilsen beer. The Chamber ruled in favor of the IAFA based on considerations related to women's right to be free from discrimination and to the protection of their integrity and dignity, referring to the American Convention and CEDAW, among other international instruments:

"Grievances two and three will be analyzed jointly, since they seek to evidence the IAFA's authority to restrict the use of women's images in advertising for alcoholic beverages. The Court considered that the IAFA's authority is limited 'to assessing the "association or connection" between the product and the qualities of the models who promote it; the gender arguments put forth are unjustifiable due to the above-mentioned regulatory restriction, consequently one should annul resolution SJCP-875-11-05 for having overreached the agency's authority when weighing the advertising submitted for approval.' (folio 299). This

Chamber considers that as it concerned the authorization of advertising of an alcoholic beverage, as is Pilsen beer, the IAFA has sufficient authority to refer to that issue.

In that sense, canon 6 of the Regulation provides: 'The Institute shall be the competent agency for seeing to the implementation of this Regulation, and, accordingly, all advertising of alcoholic beverages that is done through any means of publicity shall obtain its prior and express approval.' As for the use of the woman's image in that advertising, the IAFA is also authorized to prohibit such material 'that relates alcoholic beverages with the physical, anatomical, moral, or intellectual qualities of individuals or with their abilities or virtues.' (Article 3 id.).

In the instant case, what was submitted to the Institute for review were some photographs of women with the following characteristics – blond, slim bodies with scant clothing, in which evidently the blonds described are associated with the beer – which authorizes prohibiting the advertising, as in effect was done. Nonetheless, beyond the regulatory provision cited there are higher-level provisions that are binding nationwide, such as international treaties signed and approved by Costa Rica, among them of interest here are those that protect the honor, integrity, and dignity of persons, more specifically those referring to women. In this regard, the American Convention on Human Rights or Pact of San José (approved in Law No. 4534) establishes that "1. Every person has the right to have his physical, mental, and moral integrity respected." (Article 5) And that "1. Everyone has the right to have his honor respected and his dignity recognized." (Article 11) It further provides: "4. … public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence." (Article 13) The Convention on the Elimination of All Forms of Discrimination against Women (approved by Law No. 6968) sets forth the commitment "(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." (Article 5(a)) And the Convention to eradicate violence against women, Convention of Belém do Pará (approved by Law No. 7499) at its section 8(g) provides that the states will take measures "to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women."

Accordingly, if the Costa Rican State is committed and obligated to avoid those practices that attack the image of women, and seeing as what was submitted to the IAFA were photographs where women are represented as an instrument or object, for the female profile used exploits the physical, anatomical characteristics of the models, the Institute is obligated to prohibit the material. Certainly one may think that respect for the image of women is an issue beyond the law, yet even with that position what is certain is that it pervades the law, for it represents the values of a society at a given moment, and as such they must be respected by the community. In view of the foregoing, the majority of this Chamber considers that the advertising cited is an attack on the image of women, therefore IAFA acted correctly on denying it, which entails accepting the charges made."

CHAPTER III
CONCLUSIONS

CONCLUSIONS

193. The IACHR concludes this report by reiterating the need for the States to continue making diligent efforts to apply the standards of the inter-American human rights system in all spheres of the exercise of government authority. The legal development by the inter-American system in the spheres of violence and discrimination against women should be accompanied by State initiatives to implement these standards domestically. The judgments analyzed point to the potential of the judicial branch as a key sector for the protection of women's rights and the advancement of gender equality.

194. The next step in the struggle against discrimination and violence against women is to close the gap between the commitments assumed by the States and their full implementation domestically. As the IACHR has indicated previously:

> It is crucial that legal and policy achievements translate into concrete results for women in the Americas. To achieve this goal, we need collaboration and commitment from a variety of actors and entities. Among these, we highlight the importance and efforts of the States, civil society organizations and networks, regional and international agencies, the academic sector and the media.[182]

195. Although this report is focused on analyzing judicial decisions, the States that answered the questionnaire presented important information on how the standards of the inter-American system have impacted the adoption, content, and reform of legislation, public policies, programs, and in the response of various sectors to the problems of discrimination and violence against women, among other matters relevant to gender equality. It is also important to note that several countries reported on the adoption of significant constitutional reforms, legislation, public policies, and programs to protect women from forms of violence and discrimination, although these efforts are not necessarily the result of the standards of the inter-American system in this area.[183]

196. To conclude this report, following is information presented by the States in their responses to the questionnaire on the impact of inter-American standards on the adoption of national legislation, public policies, and programs:

- The State of Bolivia reported in its response to the questionnaire from the IACHR on the friendly settlement reached in the case of *MZ v. Bolivia*[184], brought before the IACHR, in which, as a result, courses on human rights and gender have been included in the program of the Judicial Institute (Instituto de la Judicatura); public conferences have been held directed to the judicial branch concerning access to justice for women; and victim

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[182] IACHR, Press Release No. 7/05, *The Human Rights of Women in the Americas*, March 8, 2005.

[183] See, for example, responses to the questionnaire from Belize, Bolivia, Brazil, Chile, Ecuador, Guatemala, Guyana, United States, Uruguay, and Venezuela.

[184] The case of *MZ v. Bolivia*, admitted by the IACHR on October 10, 2001, addresses the lack of due diligence of the administration of justice in sanctioning the perpetrator of a sexual assault on MZ based on discriminatory gender prejudices. In the friendly settlement report, signed by the State on March 11, 2008, the State recognized its international responsibility for the violation of the rights of MZ, which were protected by the American Convention and the Convention of Belém do Pará, in particular with respect to the right of all women to be free from violence and the State's obligation to act with due diligence to prevent, investigate, and punish such acts. In addition, in the agreement the State undertook to implement measures to avoid the recurrence of these facts and to train public servants working in the administration of justice. For more information on the State's efforts, see the Bolivian State's response to the questionnaire, and Press Release No. 40/09, *IACHR Concludes Visit to Bolivia*, June 26, 2009, available at: http://www.IACHR.oas.org/Comunicados/Spanish/2009/40-09sp.htm.

and witness units have been established in several cities of Bolivia; among other initiatives.

- The State of Brazil described a series of actions undertaken by the Executive branch based on the provisions, recommendations, and decisions of the inter-American human rights system. These include training courses on the *Maria da Penha Law* and others with the National Judicial Council, the Judicial Schools, and the National School for the Training and Continuing Education of Judges; a national judicial forum on domestic and family violence against women on March 31, 2009 during the Third Campaign around the *Maria da Penha Law,* created with a view to maintaining a permanent forum for discussions on the *Maria da Penha Law* and on domestic and family violence; and the establishment of an observatory on the law made up of 12 civil society organizations to foster actions to accompany implementation of the law and to identify gains and challenges, among other actions.

- The State of Colombia indicated that in a manner identical to the universal standards, "by means of the core constitutional rights concept the inter-American system has served as a guide to the drafters of the Colombian Constitution and the Colombian legislators in the search to make proposals for affirmative actions aimed at making a reality of Colombian women's right to equality." The State reported in its response on several constitutional and statutory provisions that establish mechanisms for women to have adequate and effective participation at all levels of the judicial branch. In addition, Article 86 of the 1991 Constitution established the possibility of any person being able to present a motion for constitutional protection (*acción de tutela*) to claim "by means of a preferential and summary procedure, by one's self or through one who proceeds in one's name, protection of her fundamental constitutional rights when these are violated or threatened by the act or omission of any public authority"; this remedy has led to judgments that have provided input for the adoption of provisions that benefit women in Colombia. The State also reported on the actions of the Office of the High-level Presidential Adviser for Women's Equity, and the creation of the National Gender Commission of the Judicial Branch, with a view to advancing effective equal opportunity between men and women, and non-discrimination based on gender, among other initiatives.

- The State of Costa Rica presented information regarding gender equality policies and non discrimination adopted by the justice system. The State informed as well of a training plan adopted in the Judicial School regarding domestic violence, and a series of dissemination mechanisms to inform the members of the justice branch about standards, decisions, and recommendations of the inter-American system, among other measures.

- The State of Chile presented information about a series of measures adopted, including the creation within the Supreme Court on October 2007 of the Center for Control, Evaluation, and Resolution of Precautionary Measures for the Family Courts in Santiago, with the goal of protecting domestic violence victims; the creation of the National Human Rights Institute with the goal of advancing the protection of human rights in the country; and the courses on human rights imparted by the Justice Academy in Chile. The State also mentioned as an advance the increase in the presence of women in the justice sector.

- The State of Guatemala reported on the adoption of three specific statutes to address the issue of violence against women – the *Law to Prevent, Punish and Eradicate Family Violence,* the *Law against Femicide and Forms of Violence against Women* and the *Law against Sexual Violence, Exploitation, and Human Trafficking* – which have taken as a reference for their contents the precepts and principles set forth in the Convention of Belém do Pará, among other instruments ratified by the State.

- The State of Guyana reported that the legislature has adopted a series of laws promoting women's rights that reflect the principles of the Convention of Belém do Pará. The State also indicated that its development agenda has been designed from a human rights perspective, including the rights contained in the Convention of Belém do Pará, and understands that the standards of the inter-American system have had an impact on reforms to the Constitution (resulting in the revised 2003 Constitution), affirming forth the principles of equality and non-discrimination.

- The State of Mexico considers that "the impact of the standards, decisions, and recommendations of the inter-American human rights system in the sphere of equality and non-discrimination based on gender are irrefutable within the structure and functioning of the federal Judicial Branch as a whole." The State mentioned as an important example, among other initiatives, the creation in 2008 of the Gender Equity Program, made up of three specialized units in the Supreme Court of Justice of the Nation, the Federal Judicial Council, and the Federal Electoral Tribunal, to carry out Mexico's obligations in respect of women's human rights contained in inter-American instruments such as the American Declaration, the American Convention, and the Convention of Belém do Pará. The program has also created strategic partnerships with important actors for attaining their objectives, including the other branches of the federal government of Mexico, in particular with the Committee on Equity and Gender of the Chamber of Deputies, the National Women's Institute, the National Council to Prevent Discrimination, and other offices of the federal Executive branch. In addition, the State indicated that the General Coordinating Body and Bureau of Gender Equity of the Supreme Court of the Nation, in conjunction with the Instituto de Investigaciones Jurídicas (Legal Research Institute) of the UNAM, have convened roundtable discussions to address the enforcement of the judgments of the Inter-American Court in the *Cotton Field, Inés Fernández Ortega,* and *Valentina Rosendo Cantú* cases.

- The State of Panama noted that "the impact of the standards, decisions, and recommendations of the inter-American human rights system in the sphere of gender equality and non-discrimination on gender grounds has been reflected in the consolidation of a state under the rule of law and as a promoter of a culture of human rights and of respecting and ensuring women's human rights…." The State mentioned, in particular, the Institutional Policy of Access to Justice and Gender, whose purpose is to carry out the obligations established in the international instruments for the protection of human rights, as well as the domestic legal provisions and in this way implement it in the judiciary; the policy highlights the principle of equality, among other measures. The State also reported on brochures that have been developed by the judiciary to strengthen the capabilities of judicial officers in relation to the Convention of Belém do Pará, among other international human rights instruments.

- The State of Paraguay reported that the Secretariat for Gender Affairs of the Judicial Branch, attached to the Supreme Court of Justice, has established certain mechanisms for implementing the standards, decisions, and recommendations developed by the organs of the inter-American human rights system in the judicial realm with various objectives, including to promote the incorporation and institutionalization of the international law of women's human rights in the administration of justice; promoting processes for implementing the gender policy, providing a platform for it; and fostering actions to make better-known the doctrine and case-law with a gender perspective and judgments that incorporate the international law of women's human rights, among others.

- The State of Peru presented, with its response, information on training events for persons working in the administration of justice on the Convention of Belém do Pará and the judgments of the Inter-American Court of Human Rights.

- The State of Uruguay presented information on training programs with a view to implementing the case-law of the inter-American system. One of the examples presented is the Initial Training Course for Aspirants to the Judiciary, whose curriculum includes information and analysis on the Convention of Belém do Pará.

- The State of Venezuela presented information indicating how the State created the National Women's Institute in 1999 – as an agency needed for overcoming societal discrimination against women, to achieve their full social inclusion, to implement the Convention of Belém do Para – as well as other international instruments on the topic. The State also presented information on a series of national programs and initiatives created to confront violence against women, such as the opening, nationwide, of 59 prosecutorial offices with jurisdiction over violence against women; the establishment of courts specialized in violence against women; and the creation of the National Commission on Gender Justice, of the judicial branch.

197. The IACHR recognizes these initiatives as gains and reiterates its commitment to work with the states of the Americas on these efforts.

QUESTIONNAIRE
(STATE ACTORS)

Legal Standards on Gender Equality in the Inter-American Human Rights System

Introduction

This questionnaire has been prepared as part of the work plan of the Rapporteurship on Women's Rights ("Rapporteurship on Women" or "Rapporteurship") of the Inter-American Commission on Human Rights ("IACHR" or "Commission") for the purpose of compiling information on legal decisions concerning the principle of equality and nondiscrimination adopted by domestic courts, and the impact of the recommendations and decisions of the organs of the inter-American human rights system in this sphere. The information compiled will be assessed in a report that will systematize and analyze the impact of the standards, recommendations, and decisions of the system on case law at the domestic level.

This initiative is part of a project implemented by the Commission, with the support of the Government of Canada, to promote the advancement of case law and legal standards on gender equality in the region, taking into account international and domestic developments. The case law of the system provides guidance to OAS Member States in their compliance with a variety of human rights obligations related to gender equality and can serve as an important resource and tool in the advocacy and monitoring efforts of civil society organizations, international agencies, and the academic sector.

Background

International human rights law has established that states have a duty to ensure the exercise of human rights for women in conditions of equality and free from all forms of discrimination. The binding principles of equality and nondiscrimination are the backbone of the inter-American human rights system and of its instruments, such as the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belém do Pará").

As regards the principle of equality and nondiscrimination, Article 24 of the American Convention provides, "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." In this regard, the Inter-American Court has held that,

> The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.[185]

As for the obligation not to discriminate, Article 1(1) of the American Convention provides,

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons

[185] I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A, No. 4.

> of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

For its part, the Convention of Belém do Pará states that violence against women "is a manifestation of the historically unequal power relations between women and men," and recognizes that the right of every woman to be free from violence includes the right to be free from all forms of discrimination. The above-cited Convention reflects the uniform concern felt throughout the hemisphere for the seriousness of the problem of violence against women, its connection with the discrimination women have historically suffered, and the need to adopt comprehensive strategies to prevent, punish, and eliminate it.

Under treaty law, both the Commission and the Court can and should take into account other sources of international obligation for Member States. In this regard, in the universal human rights system, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), defines "discrimination against women" as

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Furthermore, the CEDAW requires states parties to adopt and pursue "by all appropriate means and without delay a policy of eliminating discrimination against women."

Responses to this questionnaire should be forwarded no later than March 1, 2011 to:

Inter-American Commission on Human Rights
Organization of American States
1889 F Street, N.W.
Washington, DC 20006
cidhoea@oas.org

Questionnaire:

Please provide the following:

1) Information on (and copies of) judicial decisions issued by courts at the national level in the last 10 years in connection with gender equality and the principle of nondiscrimination, in keeping with the standards, decisions, and recommendations of the inter-American human rights system. Include information on decisions related to violence against women; their economic, social, and cultural rights; their reproductive rights; and their right to live free from all forms of discrimination, among other aspects related to women's rights.
2) Information on (and copies of) studies, research, or analyses in connection with the aforementioned decisions.
3) Describe the impact of the standards, decisions, and recommendations of the inter-American human rights system on equality and non discrimination on the basis of gender and in particular, on equality between men and women within the structure and workings of the judicial branch (at the federal, national and local level).
4) Indicate if there is a mechanism in place to implement standards, decisions, and recommendations issued by the organs of the inter-American system in the judicial sphere and its effectiveness.
5) Describe any formal or informal mechanism established for coordination or dialogue between government representatives and civil society, international agencies and/or the academic

sector, in order to create awareness in the judiciary or law schools about instruments, standards, decisions, and recommendations of the inter-American system?

6) What are the mechanisms in place to ensure that members of the judiciary are kept informed about the standards, decisions, and recommendations of the inter-American system?

For the purposes of this questionnaire:

- The expression "judicial decisions at the national level" refers broadly to court orders, judgments, recommendations, and other opinions issued by different bodies in the judicial branch of a particular country, including traditional and alternative systems of justice, and specialized tribunals. The expectation is to receive information and copies of decisions issued at the national and local level in both urban and rural areas.
- In countries with federal systems of government, the Commission hopes to obtain information from all states and provinces.
- The submission of information on decisions that concern the specific situation of women in groups that are particularly exposed to violence and discrimination, such as afro-descendent women, indigenous women, girls, elderly women, and others is encouraged.

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(NON STATE ACTORS)

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This initiative is part of a project implemented by the Commission, with the support of the Government of Canada, to promote the advancement of case law and legal standards on gender equality in the region, taking into account international and domestic developments. The case law of the system provides guidance to OAS Member States in their compliance with a variety of human rights obligations related to gender equality and can serve as an important resource and tool in the advocacy and monitoring efforts of civil society organizations, international agencies, and the academic sector.

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[186] I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A, No. 4.

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Under treaty law, both the Commission and the Court can and should take into account other sources of international obligation for Member States. In this regard, in the universal human rights system, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), defines "discrimination against women" as

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Furthermore, the CEDAW requires states parties to adopt and pursue "by all appropriate means and without delay a policy of eliminating discrimination against women."

Responses to this questionnaire should be forwarded no later than February 22, 2011 to:

Inter-American Commission on Human Rights
Organization of American States
1889 F Street, N.W.
Washington, DC 20006
cidhoea@oas.org

Questionnaire:

Please provide the following:

7) Information on (and copies of) judicial decisions issued by courts at the national level in the last 10 years in connection with gender equality and the principle of nondiscrimination, in keeping with the standards, decisions, and recommendations of the inter-American human rights system. Include information on decisions related to violence against women; their economic, social, and cultural rights; their reproductive rights; and their right to live free from all forms of discrimination, among other aspects related to women's rights.
8) Information on (and copies of) studies, research, or analyses in connection with the aforementioned decisions.
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11) Describe any formal or informal mechanism established for coordination or dialogue between government representatives and civil society, international agencies and/or the academic

sector, in order to create awareness in the judiciary or law schools about instruments, standards, decisions, and recommendations of the inter-American system?

12) What are the mechanisms in place to ensure that members of the judiciary are kept informed about the standards, decisions, and recommendations of the inter-American system?

Information on judicial decisions issued at a regional and international level:

1) Information on (and copies of) decisions and/or recommendations of other human rights supervisory organs that have applied standards, decisions and recommendations from the Inter-American System of Human Rights.

For the purposes of this questionnaire:

- The expression "judicial decisions at the national level" refers broadly to court orders, judgments, recommendations, and other opinions issued by different bodies in the judicial branch of a particular country, including traditional and alternative systems of justice, and specialized tribunals. The expectation is to receive information and copies of decisions issued at the national and local level in both urban and rural areas.
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Updates from 2011 to 2014

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The Commission is grateful for the work of Brian Quillen in drafting this update and Rosa Celorio for drafting the original text of this report.

Approved by the Inter-American Commission on Human Rights on January 26, 2015

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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LEGAL STANDARDS RELATED TO GENDER EQUALITY AND WOMEN'S RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: DEVELOPMENT AND APPLICATION UPDATES FROM 2011-2014

TABLE OF CONTENTS

INTRODUCTION

INTRODUCTION

1. In this year, which marks the 20th anniversary of the Convention of Belém do Pará, the Inter-American Commission on Human Rights publishes an updated edition of its report on *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System*. This section underscores key developments in the adoption of legal standards in the areas of women's rights and gender equality issues between 2011 and 2014. The Commission considers these developments an important instrument and tool for all of the users of the inter-American system of human rights, and those working to advance the protection of the rights of women.

2. These legal developments took shape within the inter-American system through merits and admissibility decisions issued by the Inter-American Commission on Human Rights (hereinafter the IACHR or the Commission), decisions in cases and provisional measures by the Inter-American Court on Human Rights (hereinafter the Court), the publication of thematic and country reports by the Commission, and thematic hearings held by the Commission.

3. This report will explain the development of these legal standards in four sections: a) those pertaining to violence against women; b) those related to discrimination against women in different settings; c) new advances related to sexual and reproductive rights; and d) reparations from a gender perspective.

CHAPTER I
VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN

A. Decisions on the merits issued by the IACHR

4. Between 2011 and 2014, the IACHR would like to highlight various decisions on the merits that were adopted related to the issue of violence against women. The decisions were *Jessica Lenahan (Gonzales) et al. v. United States*, *Paloma Angélica Escobar Ledezma et al. v. Mexico*, *Claudina Isabel Velásquez* Paiz *v. Guatemala*, *Ana Teresa Yarce (Comuna 13) et al. v. Colombia* and *Gladys Carol Espinosa Gonzáles v. Peru*. The *Jessica Lenahan*, *Paloma Ledezma* and *Claudina Isabel Velásquez* decisions further developed the jurisprudence on the scope of the State duty to act with due diligence. The *Gladys Carol Espinosa Gonzáles* decision addressed the issue of violence against women in the context of armed conflict. The *Comuna 13* decision for its part advances new principles related to the obligations of the State to respect and ensure the rights of women human rights defenders in contexts affected by violence and armed actors, as well as the effect of the problem of forced displacement on women.

5. This section highlights the most important features of these decisions on the merits, organized by the themes outlined above:

The Duty to Act with Due Diligence

6. The IACHR published three decisions on the merits underscoring the duty of the States to act with due diligence in the context of the domestic violence and violence against women.

7. First, in its decision in the case of *Jessica Lenahan et al. v. United States*, the Commission found that the State failed to protect Jessica Lenahan and her three daughters Leslie, Katheryn, and Rebecca Gonzales from domestic violence, resulting in the death of the three girls. In this case, the petitioners claimed before the IACHR that, despite the issuance of a restraining order against Simon Gonzales—the ex-husband of Ms. Lenahan and the father of their three minor daughters—the United States failed to protect Ms. Lenahan and her daughters from acts of domestic violence.[1] Ms. Lenahan repeatedly called and notified the police during the evening of June 22, 1999 that her ex-husband had violated the restraining order by taking their three minor daughters; yet, the police failed to adopt reasonable measures to implement the protection order at issue. As a result, the three minor daughters were found shot to death in the back of their father's truck after a gunfight with the local police.[2] The State for its part claimed that it had no affirmative duty under the American Declaration of the Rights and Duties of Man to act with due diligence to protect Jessica Lenahan or her daughters from the acts of private actors.

8. In this report, the Commission establishes important principles related to discrimination against women and the due diligence standard under the American Declaration, and the applicability of these precepts to cases of domestic violence. The Commission underscores that States are obligated under the American Declaration to give legal effect to the duties of equal protection and non-discrimination contained under Article II, and that these include the prevention and eradication of violence against women as a key component of the duty of the State to eliminate all forms of direct and indirect discrimination.[3] The Commission also

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1 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 2.
2 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 2.
3 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 101-170.

determined that a State can incur responsibility for failing to protect women from domestic violence perpetrated by private actors under Article II of the American Declaration, and that this failure can also give rise in certain cases to violations of the right to life under Article I, and the duty to grant special protection to children contained in Article VII.[4]

9. The Commission found in its merits decision that the case of *Jessica Lenahan* fit into the larger context of the widespread treatment of the problem of domestic violence as a private matter in the United States.[5] In this sense, the Commission found that State responsibility under the due diligence standard can be implicated for failure to protect women from domestic violence perpetrated by private actors when the authorities knew or should have known the victims were at risk.[6] The fact that a restraining order was issued and that the State acknowledged that it represented "an assessment of risk and a form of State protection" indicated to the Commission that the State knew the victims were at risk and needed State protection.[7]

10. The Commission addressed the victims' right to judicial protection under Article XVIII of the American Declaration, explaining that one of its guarantees concerns the right to investigation and clarification. More specifically, this required the State to investigate the deaths of the three girls with due diligence, in order to clarify the cause and circumstances, and provide that information to their mother. Given that there had not been an adequate and diligent investigation of the girls' deaths and that more than 11 years had passed without clarity regarding the cause, time and place of their death, the Commission found a violation of the right to judicial protection under Article XVIII of the American Declaration.[8] This decision was published by the Commission on August 17, 2011. In relation to the Commission's continued interest in this case, it is important to note that the United States has not accepted the jurisdiction of the Inter-American Court, a point on which the IACHR continues to follow-up with the State.[9]

11. Second, in its decision in the case of *Paloma Angélica Escobar Ledezma et al. v. Mexico*, the IACHR found the Mexican State responsible for the violations of Article 7 of the Convention of Belém do Pará, as well as the rights to a fair trial, the rights of the child, the right to equal protection of the law, and the right to judicial protection under Articles 8(1), 19, 24, and 25 respectively of the American Convention.[10] The petitioners alleged before the Commission that, on March 2, 2002, Paloma Escobar left her home to attend school and was not seen again until her body was discovered on March 29, 2002.[11] Eight years after her death, the circumstances surrounding Paloma Escobar's disappearance and death remained unknown and the matter continued to be an example of impunity.[12] International bodies—including the UN Special Rapporteur on Violence Against Women—civil society organizations, and the petitioners explained these facts as part of a larger pattern of violence against women and impunity, holding this case out as "an emblematic case of the murders perpetrated in the state of Chihuahua."[13]

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4 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 101-170.

5 The United States "acknowledges that there were at least 3.5 million incidents of domestic violence in a four-year period, contemporary with the facts pertaining to this case." See IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 93.

6 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 133-36.

7 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 142.

8 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 199.

9 IACHR, Petition 1490/05, *Jessica Gonzales* (United States), 127 Period of Sessions, March 2, 2007; IACHR, Case 12.626, *Jessica Gonzales* (United States), 133 Period of Sessions, October 22, 2008; IACHR, Case 12.626, *Jessica Lenahan (Gonzales) – Follow up of Recommendations* (United States), 153 Period of Sessions, October 27, 2014.

10 IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, paras. 152-53.

11 IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, paras. 11-19.

12 IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, para. 128.

13 IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, para. 104.

12. The IACHR held that the State's investigation during those eight years did not meet its obligation to act with due diligence. In addition to the flaws in the recording of the chain of custody of samples taken from the body, the incoherence between expert reports and the failure to cross-check witness statements, the IACHR placed emphasis on the fact that State authorities planted fake evidence at the crime scene to obstruct justice.[14] The Commission found that, by leaving this act of violence in impunity, the State had fostered an environment conducive to the repetition of such acts of violence.[15] This decision was published by the Commission on July 12, 2013. In its decision, the IACHR outlines the compliance agreement reached between the parties for the implementation of the Commission's recommendations. Among other reparations, the State agreed to provide monetary compensation for material and non-pecuniary harm, provide medical and psychological treatment for the victims, launch a 12-month awareness campaign for the collection of data on disappeared persons, launch a sensitization campaign in the media "for a Mexico free of violence against women," implement training programs and investigation protocols for cases of female homicide with a gender perspective, and investigate the disappearance and murder of the victim.[16]

13. Lastly, the Commission found the Guatemalan state internationally responsible for the failure to act with due diligence in the case of the murder of Claudina Isabel Velásquez, a 19 year old law student.[17] On August 13, 2005, Claudina Isabel Velásquez was found dead in Guatemala City from a gunshot wound to the head. The Commission found the State had not responded effectively with initial measures of investigation. Moreover, seven years after her death, the State authorities had not identified, prosecuted or punished those responsible for the crime. The acts of violence and impunity in this case conformed to the nationally and internationally documented pattern of impunity and denial of justice faced by women who are victims of violence in Guatemala. Therefore, the Commission held that the State had violated the rights to life, to humane treatment and to equal protection of the law under the American Convention and Article 7 of the Convention Belém do Pará to the detriment of Ms. Velásquez, as well as the rights to a fair trial and judicial protection under the American Convention to the detriment of her next-of-kin. This case was submitted to the Inter-American Court for its review on March 5, 2014.

Sexual Violence during Armed Conflict

14. In the context of a case that arose during the armed conflict in Peru, the Commission issued the decision on the merits of *Gladys Carol Espinosa Gonzáles v. Perú* on March 31, 2011 and subsequently submitted the case before the Inter-American Court on December 8, 2011. Gladys Carol Espinoza Gonzáles was arrested by the National Police of Perú on April 17, 1993 and subjected to rape and other violent acts while in the custody of the former Abduction Investigation Division (DIVISE) and the National Anti-Terrorism Directorate (DINCOTE).

15. The petitioners alleged and the Commission found that the treatment of Gladys Carol Espinosa Gonzáles conformed to the widespread use of sexual violence by state agents as a weapon of war and the situation of impunity that existed during the armed conflict in Peru. Because those acts of violence were neither investigated nor punished—the case remaining in impunity—the Commission found that the State violated the right to judicial protection, humane treatment, privacy and personal liberty under Articles 5.1, 5.2, 7, 8.1, 11.1, 11.2 and 25.1 the American Convention; Article 7 of the Convention Belém do Pará; and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.[18]

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[14] IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, para. 68.
[15] IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, para. 80.
[16] IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico), July 12, 2013, para. 162.
[17] See, generally, IACHR, Report No. 53/13, Case 12.777, Merits, *Claudina Velasquez Paiz et al.* (Guatemala), November 4, 2013.
[18] IACHR, Report No. 67/11, Case 11.157, Admissibility and Merits, *Gladys Carol Espinoza Gonzáles* (Peru), March 31, 2011, para. 235.

The Situation of Women Human Rights Defenders and the Problem of Forced Displacement

16. The IACHR's decision in *Ana Teresa Yarce et. al. (Comuna 13) v. Colombia* addressed the increased risk of human rights violations faced by women working as human rights defenders in contexts affected by armed conflict and violence. In this case, the petitioners presented a series of claims pertaining to the human rights of five women human rights defenders in the Comuna 13 in Medellín, alleging in particular that the State of Colombia had failed to adopt reasonable measures to protect their personal integrity and their work as defenders, in a known context of risk for organizations and activists denouncing crimes committed by paramilitary groups. As a consequence of the events that lead to this case, one of the human rights defenders lost her life, and four were the victims of forced displacement, along with their families, among other violations.

17. In the *Comuna 13* decision, the Commission outlined the responsibilities of the State in relation to the protection of women human rights defenders. Pursuant to Article 5(1) of the American Convention, the State is obligated to adopt reasonable measures to respect and ensure the right to personal integrity of human rights defenders, including the prevention of forms of violence such as threats and acts of harassment, and to diligently investigate and sanction those responsible. This duty of prevention and protection under Article 5(1) has a special content for women who work in the defense of human rights, due to the history of discrimination they have faced based on their sex, which has exposed them in certain contexts to multiple violations of their human rights. Therefore, when a State fails to adopt reasonable measures to prevent acts of violence against women human rights defenders, and to remedy a known context of discrimination which promotes the repetition of these acts, it violates their right to personal integrity and its obligation to not discriminate against them under Article 1(1) of the American Convention.[19]

18. Additionally, the Commission held Colombia internationally responsible under Article 22(1) of the American Convention for the forced displacement of four of the human rights defenders and their families. It referred to how the problem of forced displacement has a particular effect on women in Colombia, as they constitute the majority of the victims of forced displacement , and how this problem has implications for their right to protection of the family, their right to property, and their right to associate freely.[20] This case was submitted to the Inter-American Court for its review on June 3, 2014.

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[19] IACHR, Report No. 83/13, Case 12.595, Merits, *Ana Teresa Yarce et al.* (Colombia), November 4, 2013, para. 220.

[20] IACHR, Report No. 83/13, Case 12.595, Merits, *Ana Teresa Yarce et al.* (Colombia), November 4, 2013, para. 368.

B. Decisions of the Inter-American Court of Human Rights

19. In the period from 2011 to 2014, the Inter-American Court of Human Rights adopted two judgments concerning violence against women. The cases addressed separate themes, which are outlined below.

Sexual Violence and Torture in the Context of Arbitrary Detention

20. In the case of *J. v. Peru*, the Inter-American Court of Human Rights expanded its jurisprudence on the issue of sexual violence and torture in contexts of arbitrary detention and armed conflict. On January 4, 2012, the IACHR submitted an application to the Court against the State of Peru for its preventive detention of J. on April 13, 1992.[21] This detention took place in the context of the internal armed conflict between the Peruvian government and illegal armed groups—Shining Path and Tupac Amaru Revolutionary Movement—in which thousands of human rights violations were documented and attributed to both sides.[22] In this case, Peruvian authorities entered J.'s residence for a search and illegally and arbitrarily detained her on charges of being a member of the terrorist group Shining Path.[23] During the search and arrest, J. alleged that State authorities touched her in a sexual nature.[24] After being detained, J. was then blindfolded, tied up, driven around and detained at the National Counter-Terrorism Center Directorate for 17 days without judicial oversight and in inhuman conditions.[25] The terrorism charges were later dismissed 14 months later and J. was released.[26]

21. The Court found that the actions from April 13 to 30, 1992 constituted violations of J.'s personal liberty, and rights to judicial guarantees and personal integrity found in the American Convention, as well as Article 6 of the Inter-American Convention to Prevent and Punish Torture. The illegal and arbitrary nature of her detention, as well as the duration and conditions, including restricted access to her attorney, formed the basis of the Court's decision.[27] Importantly, the Court clarified that the physical touching of J. of a sexual nature, constituted sexual violence and violated her right to personal integrity.[28] Such acts were also found to have violated Article 6 of the Inter-American Convention to Prevent and Punish Torture.[29]

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[21] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, para. 1.

[22] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, paras. 67-68. The CVR received "thousands of reports of torture or cruel, inhuman or degrading treatment or punishment that had occurred over the period of 1980-2000" and it concluded that "rape was a widespread practice that was surreptitiously tolerated, but in some cases openly permitted."

[23] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, para. 78.

[24] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, paras. 82-83.

[25] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, paras. 92-94.

[26] J. then fled the country to the U.K where she was granted refugee status. The Peruvian authorities appealed the decision to release her and re-filed charges, attaching an alert to her passport through INTERPOL. The Court found that the re-filing of charges did not constitute a violation of the principle of legality and non-retroactivity. I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, para. 104.

[27] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, paras. 313-368.

[28] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, paras. 360-61.

[29] I/A Court H.R., *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 27, 2013, para. 366.

Due Diligence and Discrimination

22. On May 3, 2012, the Commission submitted the case of *Veliz Franco and Others v. Guatemala* to the Court for its failure to investigate with due diligence the disappearance and death of a girl in Guatemala, and the subsequent impunity for these acts. Maria Isabel Veliz Franco, who was 15 years old at the time, left her home on December 16, 2001, to attend school and was not seen again until her body was discovered two days later. The body was discovered showing signs of violence and with evidence that she had been raped.[30] The State recognized its responsibility before the Commission for its failure to act with due diligence, referring to the lack of forensic testing and collection of evidence following the removal of the body, jurisdictional delays, and for failing to take effective measure to apprehend the murder suspect.[31] As a result of the lack of due diligence, there were no positive developments in the investigation after 12 years.[32]

23. Among the violations established, the Court found the State responsible for its failure to act with due diligence in the investigation of the disappearance of Maria Isabel Veliz Franco between the time she was reported as disappeared and the discovery of her body, as well as for violating Article 7 of the Convention Belém do Pará. It also found violations of the obligation not to discriminate under Article 1(1) of the American Convention during the investigation, because of the negative influence of gender stereotypes on the investigation and the lack of gender perspective.[33] After receiving notice that Maria Isabel Veliz Franco was missing, the police failed to take any substantive steps to investigate and prevent the acts of violence; thus, the State violated her right to life, personal integrity and personal liberty due to this failure to apply due diligence.[34] Furthermore, the Court found investigators referenced the victim's clothes, social and nightlife, religious beliefs and even compared the victim to a prostitute.[35] The Court held that the use and perpetuation of such gender stereotypes are both causes and consequences of gender-based violence.[36]

C. Thematic Reports

24. Supplementing the legal developments from the Commission and the Court, the IACHR published a series of thematic reports from 2011 to 2014 on women's rights issues. Two of those reports deal specifically with the issues of violence against women and access to justice.

25. The Commission published the report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*[37] as a follow-up to the recommendations presented in its 2007 report *Access to Justice for Women* Victims *of Violence in the Americas*. In its 2011 report, the IACHR examines the inter-American normative framework on sexual violence and identifies the obstacles that women face in accessing justice in this region of the Americas. Some of the main obstacles underscored are the excessively formal, complicated and lengthy complaint procedures which

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30 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para. 97-99.

31 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para. 181.

32 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para. 119.

33 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, paras. 213-16.

34 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para. 155-57.

35 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, pars. 212-213.

36 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para. 213.

37 See, generally, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63, December 9, 2011.

do not guarantee the right to privacy; the lack of information and legal and other forms of assistance; and ineffective protective measures. In the report, the Commission also reiterates the obligations of States under the American Convention on Human Rights, the Convention of Belém do Pará and the Convention on the Elimination of All Forms of Discrimination against Women to provide judicial guarantees and protection for victims of sexual violence, with due diligence and free from all forms of discrimination.

26. Moreover, the report explains the connection between the patriarchal social environment in which violence against women is tolerated and the cycle of violence and discrimination against women. The IACHR indicates that such an environment produces obstacles for women victims of sexual violence, including ineffective complaint procedures, re-victimization during investigations, and the lack of punishment. The report concludes with a series of recommendations, including the training of public officials involved in the complaint procedures, standardizing forms to register information to avoid re-victimization and the adoption of reforms to address the structural discrimination that facilitates violence against women.

27. The Commission also analyzes the issue of sexual violence and its manifestations in different contexts such as the education and health care settings in its report *Access to Justice for Women Victims of Sexual Violence: Education and Health*.[38] After identifying the relevant human rights standards, the IACHR examines the key barriers that women face when trying to gain access to justice after experiencing sexual violence in the education or healthcare sectors. In addition to the barriers experienced generally by women victims of sexual violence[39], the report highlights barriers unique to these two contexts[40], like the authority wielded by professors and physicians, which requires special attention from States in areas including legislation, practice, policies and training. The Commission concludes the report with recommendations to address the barriers outlined above, including the establishment of confidential reporting systems and the development of training programs aimed at teaching school staff that violence against girls and women is a serious violation of human rights.

D. Country Reports

28. The IACHR published two country reports during this period, concerning Jamaica, in 2012, and Colombia, in 2014, each including sections that address key advances and challenges in addressing the issue of sexual violence.

29. The 2012 *Report on the Situation of Human Rights in Jamaica*[41] outlines the prevalence of sexual violence in the country and the obstacles women face to access justice, offering recommendations to improve the current situation. The IACHR identifies a cycle of social tolerance of sexual violence, linked with a culture of aggressive masculinity, and impunity for many of these acts. This culture contributes to police officers not treating domestic violence as a crime and failing to enforce the applicable laws, creating a gap between what the law protects on paper and how it is implemented in practice. The Commission does, however, note the various programs and initiatives aimed at combating the discriminatory attitudes and stereotypes, and offers recommendations to the Jamaican State to further improve compliance with their human rights obligations.

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38 IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II. Doc. 65, December 28, 2011.

39 For example, the gaps between the law on paper and the law in practice; culture of physical punishment and violence; ineffective complaint procedures; and lack of training.

40 Other examples include that, in some cases, sexual violence is regarded as a typical form of discipline in the area of education and the scarcity of laws regulating the physician-patient relationship.

41 IACHR, *Report on the Human Rights Situation in Jamaica*, OEA/Ser.L/V/II. Doc. 12, August 10, 2012.

30. The Commission's 2014 *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia*[42] specifically analyzes the situation of women victims of sexual violence in the context of the armed conflict in Colombia. The Commission contrasts the State's progress on policy initiatives with the reports from civil society on the shortcomings of those policies in practice. The Commission highlights its concern over the habitual and systemic nature of the problem of sexual violence. Moreover, the Commission highlights that the State's refusal to acknowledge that violence against women by public security forces during the armed conflict constitutes a fundamental barrier to achieving real progress. The Commission expresses its concern over the fact that when sexual violence is treated as a public problem, it is treated as a family issue, or the State categorizes it as violence against other population groups (children, adolescents, etc.) rather than treating it as a specific issue of women's rights. Coinciding with the problem of violence against women, the IACHR refers in this report to the grave problem of the forced displacement of 1,950,000 women, 30% of whom left their homes due to sexual violence. Many of these cases of violence and forced displacement remained in impunity because of the barriers to access to justice, according to the report. The report expresses concern over the continued inter-sectional discrimination directed at afro-descendant women. This group's high level of vulnerability to violence and poverty prompted the Commission to underline the necessity that the Colombian State develop an inter-sectional approach to protect the rights of afro-descendant women.

[42] IACHR, *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013.

CHAPTER II
DISCRIMINATION AGAINST WOMEN

DISCRIMINATION AGAINST WOMEN

A. Decisions on admissibility by the IACHR

31. The IACHR admitted the *Case of I.V. (Bolivia)*, in which the petitioner alleges, among other violations, that the Bolivian state violated her right to access to information under Article 13(1) of the American Convention. The petitioner alleges that, in 2000, she was involuntarily sterilized without her informed consent through the surgical procedure of tubal ligation of her fallopian tubes. Throughout her prenatal checkups and from the time she was admitted to the hospital, the petitioner maintains that she was not provided with information concerning contraceptive methods and neither she nor her partner were informed of or gave consent to a fallopian tube ligature procedure.[43] She argues that the surgical sterilization was performed during the course of a cesarean section and she was only told of the tubal ligation procedure the day after it had happened.[44]

32. The IACHR concluded that the facts, if proven, could establish violations of I.V.'s rights to access to information, humane treatment, and privacy and family life.[45] Specifically, the Commission indicated that the scope of Article 13(1) of the American Convention could include a failure to adequately inform a woman of the effects, risks, and consequences of the surgical operation she was submitted to, and/or alternative methods according to the international human rights standards in this area.[46]

B. Decisions of the Inter-American Court of Human Rights

33. The Inter-American Court of Human Rights issued two key decisions in the period of 2011 and 2014 offering content to the obligations of equality and non-discrimination under the American Convention and other inter-American instruments.

Discrimination on the Basis of Sexual Orientation and Gender Identity

34. For the first time, the Court handed down a decision in relation to discrimination on the basis of sexual orientation and gender identity in the *Case of Atala Riffo and Daughters v. Chile*. On September 17, 2010, the Inter-American Commission on Human Rights submitted the *Case of Atala Riffo and Daughters v. Chile*[47] to the Inter-American Court alleging violations of the rights to equality and non-discrimination of Karen Atala and her daughters M., V. and R. due to a legal proceeding in which Karen Atala lost custody over her daughters due to Ms. Atala's sexual orientation. The Supreme Court of Chile justified its decision revoking Ms. Atala's custody in favor of the girls' father on the following grounds: (1) living in a same-sex household with Ms. Atala and her lesbian partner would subject the children to social discrimination; (2) the children would have confusion of sexual roles; (3) the mother, Karen Atala, had placed her own

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43 IACHR, Report 40/08, Petition 270-70, Report on Admissibility, I.V., Bolivia, July 23, 2008, para. 21.
44 IACHR, Report 40/08, Petition 270-70, Report on Admissibility, I.V., Bolivia, July 23, 2008, para. 16.
45 IACHR, Report 40/08, Petition 270-70, Report on Admissibility, I.V., Bolivia, July 23, 2008, para. 80.
46 IACHR, Report 40/08, Petition 270-70, Report on Admissibility, I.V., Bolivia, July 23, 2008, para. 81.
47 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, para. 1.

interests first by engaging in a same-sex relationship; and, (4) the children have a right to be raised in a traditional family.[48]

35. The Inter-American Court established in a landmark judgment that human rights treaties are living instruments and ruled that sexual orientation and gender identity were prohibited grounds for discrimination under Article 1(1) of the American Convention.[49] The Court reviewed in detail the content of the obligations not to discriminate and to guarantee equality and the connection of these obligations to the rights to privacy and to family life. The Court also clarified that discrimination against any of the parents in a custody case does not further the best interests of the child, but rather serves to discriminate against the children involved, and alluded to the presence of prejudices and stereotypes in the actions of justice officials as contrary to multiple dispositions of the American Convention. [50]

36. Consequently, the Inter-American Court considered that the difference in treatment based on the sexual orientation of Karen Atala during the custody proceeding at issue violated her right to equality and the obligation not to discriminate under Article 1(1), of the American Convention.[51] Additionally, the Court found that the conduct of the Chilean courts violated the rights to private life and protection of the family under Articles 11(2) and 17(1) of the American Convention to the detriment of Karen Atala and her daughters.[52] The Court also held that the State violated the right of the child to special protection contained in Article 19 of the American Convention, to the detriment of the three daughters, and their right to be heard provided for in Article 8.1 of the same instrument.[53]

Sexual and Reproductive Rights

37. On July 29, 2011, the Inter-American Commission on Human Rights submitted the *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*[54] to the Court for violations of the rights to privacy and family life among others under the American Convention. In this case, nine couples were trying to conceive biological children and in-vitro fertilization (IVF) was a necessary option because of conditions of infertility on the part of one or both partners.[55] The IVF procedure was allowed under the February 3, 1995 Executive Decree 24026-S until the Supreme Court of Justice ruled that the procedure was unconstitutional on March 15, 2000, effectively prohibiting IVF in Costa Rica.[56] The decision of the Supreme Court of Justice interrupted the medical treatment already in progress for some of the victims, and required some victims to leave the country to access IVF treatment.[57]

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48 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, paras. 115-45.

49 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, paras. 83-85.

50 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, paras. 78-238.

51 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, paras. 109-11.

52 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, para. 314 , number 4, paras. 168-178.

53 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, para. 314, numbers 2 and 5, paras. 150-155, 196-222.

54 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 1.

55 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, paras. 85-125.

56 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 2.

57 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 161.

38. The ruling of the Inter-American Court issued on November 28, 2012 for the first time addressed sexual and reproductive rights comprehensively. The ruling contains groundbreaking analysis pertaining to several issues which are fundamental to the exercise of the human rights of women in the areas of sexual and reproductive health.

39. The Court addresses the right to reproductive and sexual autonomy in the context of the right to privacy under Articles 5(1), 7, 11(2) and 17(2), in conjunction with Article 1(1) of the American Convention. In its ruling, it recognizes the link between the right to privacy, reproductive autonomy, and adequate access to reproductive health services and medical technology.[58] In explaining the content of this right, the Court invokes Article 16(e) of the Convention for the Elimination of All Forms of Discrimination Against Women, which guarantees the right of women to freely and responsibly decide the number and spacing of their children, as well as to have access to the information, education, and the means necessary to exercise this right.[59] The Court further held that the right to privacy includes the right to decide to become a parent in both the genetic and biological sense.[60] Therefore, the Court concluded that the IVF prohibition violated the rights to privacy and to form a family under the American Convention.

40. With respect to the scope of the protection of the right to life under Article 4(1) of the American Convention, the Court also establishes the following:

> The precedents examined so far allow it to be inferred that the purpose of Article 4(1) of the Convention is to safeguard the right to life, without this entailing the denial of other rights protected by the Convention. Thus, the object and purpose of the expression "in general" is to permit, should a conflict between rights arise, the possibility of invoking exceptions to the protection of the right to life from the moment of conception. In other words, the object and purpose of Article 4(1) of the Convention is that the right to life should not be understood as an absolute right, the alleged protection of which can justify the total negation of other rights…..[61]
>
> The Court has used different methods of interpretation that have led to similar results according to which the embryo cannot be understood to be a person for the purposes of Article 4(1) of the American Convention. In addition, after analyzing the available scientific data, the Court has concluded that "conception" in the sense of Article 4(1) occurs at the moment when the embryo becomes implanted in the uterus, which explains why, before this event, Article 4 of the Convention would not be applicable. Moreover, it can be concluded from the words "in general" that the protection of the right to life under this provision is not absolute, but rather gradual and incremental according to its development, since it is not an absolute and unconditional obligation, but entails understanding that exceptions to the general rule are admissible.[62]

41. The Court overall considered that the Constitutional Chamber had based its decision "on an absolute protection of the embryo" and that the failure to take into account competing rights constituted an arbitrary, excessive and disproportionate interference in the rights to a private

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58 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 146.

59 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 146.

60 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 143.

61 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 258.

62 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 264.

and family life of the couples involved.[63] It also considered that this interference had discriminatory effects on different grounds. [64]

C. Provisional measures

42. The Inter-American Court of Human Rights issued provisional measures for the first time in relation to sexual and reproductive rights in the *Matter of B. (El Salvador)* on May 29, 2013. B was a pregnant 22 year old woman suffering from several medical conditions, including severe lupus, and doctors discovered in the 20th week of her pregnancy that the fetus was anencephalic (without a brain), a condition incompatible with life outside the uterus.[65] The medical committee at the Hospital determined that to continue the pregnancy meant risking irreparable damage to the health of B., including major obstetric hemorrhage, deterioration of her condition due to lupus, worsening of her kidney failure, or death.[66] Five weeks after the medical committee recommended the termination of the pregnancy, no action had been taken despite the proven high risk of maternal death faced by B, because hospital personnel were concerned that the complete prohibition of abortion would expose them to criminal penalties.[67]

43. The Court found the elements necessary to issue provisional measures—extreme gravity, urgency and the risk of irreparable harm—all to be present and accordingly ordered the State to: "adopt and guarantee, urgently, all the necessary and effective measures so that the medical team who are treating B. can take, without any interference, the medical measures they consider opportune and desirable to ensure due protection of the rights established in Articles 4 and 5 of the American Convention and, in this way avoid any damage that could be irreparable to the rights to the life, personal integrity and health of B."[68] The Commission had requested the provisional measures after the issuance of precautionary measures had failed to prompt the treatment recommended by B's doctors. That treatment was carried out days after the issuance of the provisional measures.

D. Thematic reports

44. During this period, the Commission also published three thematic reports advancing important principles related to the obligation not to discriminate and the principle of equality. The thematic reports focused on the following areas: political rights and women; economic, social and cultural rights; and reproductive rights.

Political Rights and Women

45. In the report *The Road to Substantive Democracy: Women's Political Participation in the Americas*, the IACHR emphasizes that the participation and representation of women is a "necessary condition for strengthening democracy in the Americas."[69] The Commission highlights several positive measures taken by governments across the region, including quota laws, establishing institutions and ministries to promote women's human rights and political leadership, and offering public financing to female candidates. While noting that women have

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63 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para. 316.

64 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, paras. 285-316.

65 I/A Court H.R., *Matter of B.* (El Salvador)*, Provisional Measures*, Order of May 29, 2013, para. 8(b).

66 I/A Court H.R., *Matter of B.* (El Salvador)*, Provisional Measures*, Order of May 29, 2013, paras. 12-13.

67 I/A Court H.R., *Matter of B.* (El Salvador)*, Provisional Measures*, Order of May 29, 2013, para. 4(e).

68 I/A Court H.R., *Matter of B. v. El Salvador, Provisional Measures*, Order of May 29, 2013, Decision number 1, p. 14.

69 See, generally, IACHR, *The Road to Substantive Democracy: Women's Political Participation in the Americas*, OEA/Ser.L/V/II. Doc. 79, April 18, 2011, para. 1.

become a significant voting bloc in the hemisphere, the IACHR highlights that significant obstacles remain for women to be well-represented in decision-making positions. Problems ranging from the hierarchy of gender roles to the socioeconomic disadvantages of women have been identified as underlying causes of the low percentage of women serving in upper houses of parliaments, ministerial cabinets, municipal and local government. This lack of quantitative representation produces a lack of qualitative representation and understanding of women's issues. The IACHR concludes the report with a series of recommendations to address those challenges, including the adoption of legislative and policy measures to remove the structural barriers for women to have equal access to decision-making positions and the development of incentives for political parties to ensure equality in participation for women. [70]

Economic, Social and Cultural Rights

46. The Commission published a report entitled *The Work, Education and Resources of Women: The Road to Guaranteeing Economic, Social and Cultural Rights* as part of a hemispheric initiative to examine the discrimination engrained in the structural inequalities between men and women in the exercise of their economic, social and cultural rights. The report recalls that the economic, social and cultural rights of women are interdependent and indivisible with their civil and political rights. The IACHR singles out the discrimination that women face in the areas of work, education and access to and control over economic resources, including the persistence of poverty and extreme poverty, gender stereotypes and the unequal division of household responsibilities. Many States lack important protections to address the problems related to domestic workers and workers in the informal sector, the sexual division of labor, and the double discrimination against elderly women. The Commission then recommends that States conduct campaigns to raise awareness for women regarding their labor rights; work to change the socio-cultural patterns that discriminate against women; and promote efforts to compile information on unremunerated work and work in the informal sector. [71]

Reproductive Rights

47. The Commission released the report *Access to Information on Reproductive Health from a Human Rights Perspective* in order to address women's right to information on reproductive and sexual health without discrimination. The report explains the link between the protection of this right and the protection of other important rights for women, including the right to life, personal integrity and privacy. After describing the obligations under existing international legal standards, the report then identifies the barriers for women to access information on their reproductive rights, such as forced sterilization, limited access to information on family-planning services, and limited access to basic medical and social services. Additionally, the report highlights that women who live in poverty, are indigenous, afro-descendent, who live in rural areas, and those who are migrants, are the ones who face the greatest barriers in their access to information. Lastly, the Commission recommends a number of measures that address those barriers: harmonize domestic laws on access to information and education on reproductive rights with international standards, incorporate effective judicial review of decisions by public officials who deny access to certain information, and ensure health professionals' obligation to inform women so they can make free, informed and responsible reproductive decisions. [72]

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[70] See, generally, IACHR, *The Road to Substantive Democracy: Women's Political Participation in the Americas*, OEA/Ser.L/V/II. Doc. 79, April 18, 2011.

[71] See, generally, IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II. Doc. November 3, 2011.

[72] See, generally, IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 61, November 22, 2011.

E. Country reports

48. The IACHR reports on Jamaica and Colombia, in addition to addressing the issue of sexual violence, also discuss the issue of discrimination against women.

49. The 2012 *Report on the Situation of Human Rights in Jamaica* examines the legal framework of Jamaica to address discrimination against women and the obstacles women face in the country. The Commission contrasts these obstacles to international legal standards related to discrimination and violence against women, as well as the provisions in the constitution and legal reforms in the areas of violence, family law, and economic, social and cultural rights. However, as the IACHR notes, the disproportionate impact of poverty on women, the lower salaries, greater rates of unemployment, and their underrepresentation in the political process are all barriers to women overcoming the discriminatory attitudes and stereotypes that persist in the country. [73]

50. The IACHR's 2014 *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia* addresses the situation of reproductive and sexual rights, women defenders of human rights, and afro-descendant women. While outreach methods to disseminate information on reproductive rights have not been sufficient, the Commission highlighted that, pursuant to its C-355-06 ruling, the Constitutional Court protects the right of women in Colombia to terminate a pregnancy if the mother's health is at risk or the fetus has a condition incompatible with life. Additionally, the IACHR notes with concern the threats and violence that women defenders of human rights and their families face in Colombia, pointing out that the Commission has had to grant precautionary measures to protect them. Afro-descendant women also face such violence and discrimination based both on their race and their gender and many face additional factors of discrimination and vulnerability in the specific context of the armed conflict.[74]

F. Thematic hearings held by the IACHR

51. The Commission has held a significant number of hearings related to different women's rights issues between 2011 and 2014. Some of these hearings have addressed a number of novel and noteworthy issues for the inter-American system of human rights, including the areas of sexual and reproductive rights, the rights of indigenous and afro-descendent women, and different facets of women's economic, social and cultural rights. Examples of these hearings are presented below.

Sexual and Reproductive Rights

52. Priority issues concerning the sexual and reproductive rights of women have been prominent in Commission hearings between 2011 and 2014. Non-governmental organizations across the hemisphere have informed the Commission of concerns related to:

- The impact of the criminalization of abortion in all circumstances and its link to the problem of maternal mortality;[75]
- In the case of abortion laws allowing its application for therapeutic abortions, rape or incest, barriers women face in obtaining the procedure under the law;[76]

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[73] See, generally, IACHR, *Report on the Human Rights Situation in Jamaica*, OEA/Ser.L/V/II. Doc. 12, August 10, 2012.

[74] See, generally, IACHR, *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013.

[75] IACHR, Report on the 153rd Session of the IACHR, "Sexual and reproductive rights of women in the Americas", held on October 30, 2014; IACHR, Press Release No 35A/14, Report on the 150th Session of the IACHR, "Situation of the right to life for women in Bolivia," held on March 28, 2014; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights and the criminalization of abortion in South America," held on March 15, 2013.

- Restrictions to the distribution, sale and circulation of emergency contraception methods;[77]
- Obstacles to access the education and information necessary to make autonomous decisions concerning sexual and reproductive health;[78]
- The particular and unique barriers faced by women with disabilities to exercise their sexual and reproductive rights;[79]
- The persistence of obstetric violence in health settings;[80]
- The threats faced by human rights organizations that work to advance sexual and reproductive rights issues in the hemisphere, among other issues.[81]

53. The Commission has consistently reaffirmed the sexual and reproductive rights of women, noting that such issues also implicate the exercise of women's rights to life, integrity, dignity, and freedom, among other rights. The Commission has called for more information from both civil society and States on the progress and setbacks in the region for the protection of sexual and reproductive rights, particularly in relation to the approaches in place to protect women human rights defenders as well as women affected by poverty and living with disabilities.[82] The Commission has further stated that States should refer to the IACHR's recommendations in its reports on *Access to Maternal Health Services from a Human Rights Perspective* and *Access to Information on Reproductive Health from a Human Rights Perspective* when examining and implementing the existing laws, rules and public policies related to reproductive health services in order to prevent discrimination and to guarantee that women have access to a timely, complete, accessible, reliable, and proactive information on reproductive matters.[83] Lastly the Commission has emphasized the importance of recognizing therapeutic abortion as a specialized health service required by women when the mother's life is at risk due to the pregnancy.[84]

54. As a concrete example, the Commission has received information in the context of hearings on the alarming impact of the criminalization of abortion in all circumstances on women in El Salvador. The Commission was informed during a hearing on the *Situation of human rights of women and girls in El Salvador* that between 2000 and 2011 at least 129 women had been

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76 IACHR, Report on the 153rd Session of the IACHR, "Sexual and reproductive rights of women in the Americas", held on October 30, 2014; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights and the criminalization of abortion in South America," held on March 15, 2013.

77 IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive rights and emergency contraception in the Americas," held on October 29, 2013; IACHR, Annex to Press Release 134/12 on the 146th Regular Session of the IACHR, "Access to public information and the right to sexual and reproductive health in the Americas," held on November 2, 2012.

78 IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive rights and emergency contraception in the Americas," held on October 29, 2013; IACHR, Annex to Press Release 134/12 on the 146th Regular Session of the IACHR, "Access to public information and the right to sexual and reproductive health in the Americas," held on November 2, 2012.

79 IACHR, Press Release No. 35A/14, Report on the 150th Session of the IACHR, "Violations of the sexual and reproductive rights of persons with disabilities," held on March 24, 2014.

80 IACHR, Press Release No. 35A/14, Report on the 150th Session of the IACHR, "Violations of the sexual and reproductive rights of persons with disabilities," held on March 24, 2014.

81 IACHR, Report on the 153rd Session of the IACHR, "Sexual and reproductive rights of women in the Americas", held on October 30, 2014.

82 IACHR, Report on the 153rd Session of the IACHR, "Sexual and reproductive rights of women in the Americas", held on October 30, 2014; IACHR, Press Release No. 35A/14, Report on the 150th Session of the IACHR, "Violations of the sexual and reproductive rights of persons with disabilities," held on March 24, 2014; IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive rights and emergency contraception in the Americas," held on October 29, 2013.

83 IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive rights and emergency contraception in the Americas," held on October 29, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights and the criminalization of abortion in South America," held on March 15, 2013; IACHR, Annex to Press Release 134/12 on the 146th Regular Session of the IACHR, "Access to public information and the right to sexual and reproductive health in the Americas," held on November 2, 2012.

84 IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights and the criminalization of abortion in South America," held on March 15, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Situation of human rights of women and girls in El Salvador," held on March 16, 2013.

prosecuted for the crimes of abortion or for aggravated homicide in that country.[85] During the hearing, the organizations reported that most of the women processed were young, affected by poverty, had low educational levels, and were marginalized, facing challenges in their access to basic health services. They reported that women who sought emergency health services due to miscarriages were arrested and deprived of their liberty, and that women had been convicted after being denounced by their doctors to the authorities without sufficient elements of proof. A number of international bodies have also voiced their concern over the criminal sanction of women for presumed abortions and the impact of the prohibition of abortion in all circumstances in El Salvador.[86]

55. In response to this information of concern, the Commission reiterates the obligation of the State of El Salvador and others in the region to undertake "a detailed review of all public laws, standards, practices, and policies whose language or their practical implementation can have a discriminatory impact on women's access to reproductive health services; their duty to eliminate all de jure and de facto barriers that impede women's access to the maternal health services they require, such as the criminalization of the same; and to take into account that restrictive laws tend to have a special effect on girls and women who are affected by poverty, have low-levels of education, and live in rural areas."[87]

Indigenous and Afro-Descendent Women

56. Through its thematic hearings, the Commission has also received information on the multiple forms of discrimination and violence faced by indigenous and afro-descendent women based on their race, ethnicity, gender and situation of poverty. The Commission was also informed of incidents of violence documented in Canada, Argentina, Columbia, Guatemala and Mexico, including 600 disappearances of aboriginal women in Canada, and the forced displacement of afro-descendent women in the context of Colombia's armed conflict and mega-development projects.[88] Moreover, the Commission received information on the intercultural barriers to their full access to health services, justice and information due to the pervasive intersectional discrimination against indigenous and afro-descendent women. In the context of the historical and structural inequality of indigenous and afro-descendent women, the Commission has called for an integral and intercultural approach by States to address the economic, linguistic, geographic, and intercultural barriers to the full exercise of their human rights.[89]

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85 IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Situation of human rights of women and girls in El Salvador," held on March 16, 2013.

86 UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined third, fourth and fifth periodic reports of El Salvador*, E/C.12/SLV/CO/3-5, June 19, 2014, para.22; Human Rights Committee, CCPR/C/SLV/CO/06, November 18, 2010, para. 10; UNHRC, *Report of the Working Group on the Universal Periodic Review in El Salvador*, A/HRC/14/5. March 18, 2010, para. 82.37 ; CEDAW, *observationson the State of el Salvador,* November 7, 2008.

87 IACHR, Annex to the Press Release Issued at the Close of the 149th Session, "Reproductive rights and emergency contraception in the Americas," held on October 29, 2013.

88 IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights situation of Afrodescendent women in Colombia," held on March 14, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Situation of right to life of indigenous women and girls in Canada," held on March 12, 2013; IACHR, Annex to the Press Release 36/12 on the conclusion of the IACHR's 144th Session, "Discrimination against indigenous women in the Americas," held on March 28, 2012. See also, IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014 (In this report, the Commission provides a detailed account of the problem of violence and disappearances affecting aboriginal women in Canada, analyzes the applicable legal standards related to violence and discrimination against indigenous women, and describes the range of State obligations at issue in the process to comply with the standards advanced).

89 IACHR, Report on the 153rd Session of the IACHR, "Human rights situation of indigenous women in Nicaragua," held on October 28, 2014;IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights situation of Afrodescendent women in Colombia," held on March 14, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Situation of right to life of indigenous women and girls in Canada," held on March 12, 2013; IACHR, Annex to the Press Release Issued at the Close of the 147th Session, "Human rights situation of afrodescendent women in Brazil," held on March 11, 2013; IACHR, Annex to the Press Release 36/12 on the conclusion of the IACHR's 144th Session, "Discrimination against indigenous women in the Americas," held on March 28, 2012; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014.

Economic, Social and Cultural Rights

57. The Commission has also begun to receive information related to the economic, social and cultural rights of women. In 2010, experts from the Americas reported to the IACHR on challenges and barriers women face to adequately access education of quality, decent work, and access to and control over economic resources.[90] During its 153rd and 134th Period of Sessions, the Commission received information on the economic, social and cultural rights of women in Honduras, particularly in relation to the harsh working conditions of women workers in the maquila industry.[91] The petitioner organizations additionally presented information on the physical and mental health problems caused by the working conditions in the maquila industry, including musculoskeletal injuries, sickness and depression. The use of longer work days than legally allowed, the repetitive nature of the tasks involved, and unreasonably high production quotas reportedly violated the rights to decent and quality work conditions and to health of the women workers. Therefore, the Commission sought more information from the State regarding the situation of labor unions in the textile industry and the status of implementation of International Labor Organization standards.

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90 IACHR, Annex to the Press Release 38/10 on the 138th Regular Period of Sessions of the IACHR, "Discrimination against women in the exercise of their economic and social rights in the Americas," held on March 23, 2010; IACHR, Annex to the Press Release 109/10 on the 140th Regular Period of Sessions of the IACHR, "Discrimination against women in the exercise of their economic and social rights in the Americas," held on October 26, 2010.

91 IACHR, Report on the 153rd Session of the IACHR, "Economic, social and cultural rights of women in Honduras," held on October 30, 2014; IACHR, Annex of Press Release 13/09 on the 134th Ordinary Period of Sessions of the IACHR, "Economic, Social and Cultural Rights of Maquila Workers in Honduras," held on March 23, 2009.

CHAPTER III
REPARATIONS

REPARATIONS

58. The Inter-American Commission would like to close this update by highlighting key legal developments related to the content of reparations in cases addressing women's rights issues. This section traces developments in standards related to reparations in gender-specific cases in decisions issued by the Commission and the Court between 2011 and 2014.

59. As background, the Commission highlights the 2009 ruling in the case of *González et al. ("Cotton Field") v. Mexico*, in which the Inter-American Court for the first time underscores the need to go beyond mere restitution in cases of violence against women, and to craft reparations designed to address the context of structural discrimination which promotes the repetition of violence against women.[92] This emphasis on transformative reparations evidences an increasing awareness from the inter-American system of the role played by gender stereotypes and historical discrimination in fueling the problem of violence against women.[93] As has been indicated by the current United Nations Rapporteur on Violence against Women, its Causes and Consequences, gender-sensitive reparations view the incident of violence perpetrated against a woman and the pre-existing structural discrimination as part of the same failure of the State in relation to each individual female victim.[94] In this sense, the UN Rapporteur has indicated that guarantees of non-repetition are considered to "have the greatest transformative potential" because "in promising to ensure non-recurrence, such guarantees trigger a discussion about the underlying structural causes of the violence and their gendered manifestations and a discussion about the broader institutional or legal reforms that might be called for to ensure non-repetition."[95]

60. The *Cotton Field* case marks the first step the Inter-American Court took towards embracing transformative reparations in cases of violence against women and gender-based discrimination. The Court acknowledged "the context of structural discrimination in which the facts of this case occurred" and decided that "the reparations must be designed to change this situation, so that their effect is not only of restitution, but also rectification."[96] This gender-sensitive approach is evident in the orders related to the guarantee of non-repetition, in which the Court mandates the harmonization of Mexico's criminal protocols with international standards for cases of disappearance, sexual abuse, and the murder of women[97] and the implementation of education and training programs in human rights with a gender perspective.[98]

61. The Commission has also increasingly incorporated the idea of transformative redress in its recommendations contained in its merits reports pertaining to violence against women. In its

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92 I/A Court H.R., *Case of González et al. ("Cotton Field') v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, para. 450.

93 For more related analysis, see Ruth Rubio Marín and Clara Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment," *Human Rights Quarterly*, vol. 33, 2011, p.1068.

94 Rashida Manjoo, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development," *Human Rights Council*, A/HRC/14/22, April 19, 2010, p.13: "Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation."

95 Rashida Manjoo, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development," *Human Rights Council*, A/HRC/14/22, April 19, 2010, p.26.

96 I/A Court H.R., *Case of González et al. ("Cotton Field') v. Mexico*, *Preliminary Objection, Merits*, *Reparations, and Costs*, Judgment of November 16, 2009, para. 450.

97 I/A Court H.R., *Case of González et al. ("Cotton Field') v. Mexico*, *Preliminary Objection, Merits, Reparations, and Costs*, Judgment of November 16, 2009, para. 502.

98 I/A Court H.R., *Case of González et al. ("Cotton Field') v. Mexico*, *Preliminary Objection, Merits, Reparations, and Costs*, Judgment of November 16, 2009, para. 540.

decision in the case of *Jessica Lenahan et al. v. United States*, the IACHR recommended that the State investigate systemic failures of the police response, reform existing legislative measures to improve enforcement of restraining orders, and adopt public policies and institutional programs to remedy the stereotypes commonly directed against domestic violence victims.[99]

62. Similarly, the Commission recommended in the case of *Paloma Angélica Escobar Ledezma et al. v. Mexico* that the State develop public education programs "to promote respect for women as equals and observance of their right not to be subjected to violence or discrimination;" incorporate a gender-perspective and harmonize forensic protocols with international standards in criminal investigations related to violence against women to prevent impunity; and continue to adopt institutional programs aimed at "restructuring stereotypes concerning the role of women" and promoting "the eradication of discriminatory socio cultural patterns."[100]

63. Similarly, in *Claudina Isabel Velásquez v. Guatemala*, the Commission recommended that Guatemala use "effective criminal investigations conducted from a gender perspective" to enhance "institutional capacity to combat impunity in cases of violence against women;" "introduce reforms in the State's educational programs, starting in the early, formative years, so as to promote respect for women as equals and observance of their rights to nonviolence and nondiscrimination;" and adopt policies "to promote the eradication of discriminatory socio-cultural patterns that prevent women's full access to justice."[101] Lastly, the Commission recommended in its decision in the case of *Gladys Carol Espinosa Gonzáles* that the State put in place "permanent human rights education programs within all hierarchical levels of its police forces, and include in the curriculum of those training programs reference to international human rights instruments, specifically those related to the protection of the rights of women, particularly their right to a life free of violence and discrimination."[102]

64. Specifically in the context of women human rights defenders, the Commission's recommendations in *Comuna 13* aimed to foster a more inclusive and safe environment for human rights defenders acting on behalf of women. The IACHR recommended to Colombia the implementation of policies "designed to bring about safe conditions for the activities of human rights defenders in Comuna 13;" to "implement interventions in *Comuna 13* in order to promote a human rights culture in which the fundamental role that is played by human rights defenders is publically acknowledged;" and to "generate opportunities for dialogue between organizations working in human rights defense in *Comuna 13* and high-level authorities."[103]

65. Similar to the Commission's recommendations outlined above, the Court has also incorporated gender-specific considerations in its reparations orders in a number of cases described below.

66. In its 2012 decision in the *Case of Atala Riffo and Daughters v. Chile*, the Court ordered transformative reparations in the context of discrimination based on sexual orientation and gender identity. It explicitly acknowledged that "some reparations must have a transformative purpose, in order to produce both a restorative and corrective effect and promote structural changes, dismantling certain stereotypes and practices that perpetuate discrimination against LGBT groups."[104] To accomplish this purpose, the Court ordered training for public officials on

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99 IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 201.

100 IACHR, Report No. 51/13, Case 12.551, Merits, *Paloma Angélica Escobar Ledezma et al.* (Mexico) July 12, 2013, paras. 153-54.

101 IACHR, Report No. 53/13, Case 12.777, Merits, *Claudina Velasquez Paiz et al.* (Guatemala), November 4, 2013, recommendations 5, 7 and 8.

102 IACHR, Report No. 67/11, Case 11.157, Admissibility and Merits, *Gladys Carol Espinoza Gonzales* (Peru), March 31, 2011, para, 236, recommendation 8.

103 IACHR, Report No. 53/13, Case 12.595, Merits, *Ana Teresa Yarce et al.* (Colombia) November 4, 2013, para. 370, Recommendations 5 and 6.

104 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, para. 267.

human rights, sexual orientation and non-discrimination,[105] as well as legal and administrative changes to incorporate non-discrimination and sexual orientation into judicial guarantees.[106]

67. The Court also ordered a series of noteworthy non-repetition measures related to sexual and reproductive rights in its 2012 decision in the case of *In-Vitro Fertilization* related to Costa Rica. In the *In-Vitro Fertilization* case, the Court ordered Costa Rica to "implement programs and permanent education and training courses on human rights, reproductive rights and non-discrimination"[107] in addition to adopting "the appropriate measures that render ineffective as quickly as possible the prohibition on the practice of IVF."[108]

68. Similarly, the Court ordered reparations aimed at reversing the social discrimination that creates an environment conducive to violence against women in the case of *Veliz Franco and Others*. The Court ordered the implementation of programs and training for public officials on the prevention, punishment and eradication of the murder of women[109] and the creation of specialized courts with a gendered perspective to manage femicide cases.[110]

69. Given that these recent decisions build on prior case law, the Commission also takes advantage of the opportunity to highlight some key legal developments related to the content of reparations in cases pre-dating 2011 addressing gender equality issues. In particular, the cases of *Inés Fernández Ortega v. Mexico*, *Valentina Rosendo Cantú v. Mexico*, and the *Dos Erres Massacre* case offer insights into the issue of reparations in cases related to violence against women and multiple forms of discrimination.

70. In the case of *Inés Fernández Ortega*, the 27 year old indigenous victim was raped by members of the Mexican Army on March 22, 2002. In addition to finding the State internationally responsible for the rape, torture and lack of access to justice, the Court highlighted the various forms of discrimination—based on gender, race and socioeconomic status—against the victim. In this context of violence and multiple forms of discrimination, the Court ordered as reparations that the State continue to "implement programs and permanent training regarding diligent investigation in cases of violence against women, that include an ethnic and gender based perspective;" "implement a permanent and obligatory training and formation program or course in human rights directed at members of the Armed Forces;" and reform Article 57 of the Military Code of Justice to conform with the American Convention and other international standards.[111]

71. In another case of violence against an indigenous woman by soldiers of the Mexican army, *Valentina Rosendo Cantú v. Mexico*, a 17 year old girl was raped on February 16, 2002. The Court held the State internationally responsible for violations of the victim's rights to humane treatment, dignity and privacy, judicial protection, access to justice without discrimination and her right to special protection as a child. The Court also expressed its concern in relation to the multiple forms of discrimination and violence faced by indigenous women in Mexico. Facing a situation very similar to the case of *Inés Fernández Ortega*, the Inter-American Court ordered

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105 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, para. 269.

106 I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs,* Judgment of February 24, 2012, para. 284.

107 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para 341.

108 I/A Court H.R., *Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs,* Judgment of November 28, 2012, para 336.

109 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para. 264.

110 I/A Court H.R., *Case of Veliz Franco y Otros v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of May 19, 2014, para 270.

111 I/A Court H.R., *Case of Inés Fernández Ortega v. Mexico, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of August 30, 2010, para. 308, recommendations 14, 19 and 20.

nearly identical reparations, including training with an ethnic and gender perspective, human rights training for the Armed Forces, and harmonizing the Military Code of Justice with the American Convention and other international standards.[112]

72. In the context of violence against women during armed conflict, the case of *Dos Erres Massacre v. Guatemala* involved the massacre of 251 inhabitants of the community of Las Dos Erres from December 6 to 8, 1982. This case took place during the Guatemalan armed conflict between 1960 and 1996, where women were targets of sexual violence, and it was claimed in the context of this case that women had been raped and beaten to the point of suffering miscarriages. After holding the State internationally responsible for the lack of due diligence in the investigations, prosecution and punishment of the state agents responsible, the Court ordered the implementation of human rights training for different State authorities and the creation of a webpage to facilitate the search for children abducted and illegally detained during the internal armed conflict as the only measures to guarantee non-repetition.[113]

73. Lastly, the Commission's 2014 report *Truth Justice and Reparation: Report on the Situation of Human Rights in Colombia* offers an overview of the reparations mechanisms in place related to the process to achieve a stable and lasting peace in the country. The report underscores priority issues such as the restitution of land for women victims of forced displacement and the need to guarantee that women affected directly by the conflict and its consequences participate in decision-making instances searching for a solution to the armed conflict. In the context of structural discrimination, the report emphasizes the need for reparations to have a transformative role and not merely restore women victims to their previous situation of pre-existing discrimination.[114] The Commission also considers it key for the State to implement reparations measures through an integral, holistic approach by specialized institutions and personnel.[115] The Commission, in sum, underscores the importance of a gender perspective in the implementation and grant of all reparations.[116]

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112 I/A Court H.R., *Case of Valentina Rosendo Cantú v. Mexico, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of August 31, 2010, para. 295, recommendations 12, 17, and 18.

113 I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs,* Judgment of November 24, 2009, para. 310, recommendations 12 and 17.

114 IACHR, *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 462: "[a]lso, in situations of structural discrimination, the reparations should take on a transformative role in this situation, such that they have an effect that is not only restorative but corrective. In this sense, it is not acceptable to restore the same structural situation of violence and discrimination."

115 IACHR, *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 463.

116 IACHR, *Truth, Justice and Reparation: Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, para. 532, recommendation 3.

CHAPTER IV
CONCLUSIONS

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74. The IACHR concludes this update by encouraging States to continue acting with due diligence to apply the standards of the Inter-American system pertaining to all civil, political, economic, social and cultural rights of women. At the 20th anniversary of the Convention Belém do Pará, States should continue efforts to better implement its principles and obligations in their efforts to prevent, punish, and eradicate violence against women. The Commission further encourages States to adopt all measures at their disposal to comply with the recommendations and orders of the Commission and the Court in the area of women's rights.

75. The Commission also concludes by recognizing the steadfast work of a multiplicity of actors – from civil society, the academic sector, international organizations, the state sector, and others - in the advancement of gender equality in the Americas. Their work and contributions have undoubtedly left a mark on the continuing development of the standards of the inter-American system of human rights in this area.